KASHMIR
GOVERNMENT AND POLITICS

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PREFACE

The book **Kashmir: Government and Politics** is presented to the readers with the hope of their partial satisfaction. The Government and Politics of Kashmir has been usually a subject of great controversy from 1947 to the present. Regarding political events during the last three decades, there have been prevailing more than one opinions. In the beginning the politics of accession played a vital role, and later on Article 370 of the Indian Constitution became a tool for politics. The post-1947 period witnessed more opportunist leadership in the political arena. A political party usually put up a slogan for the retention of Article 370 when out of power and for its abrogation while in power. Kashmiris feel politically alienated now asthe Indian Government and leadership discredited themselves by revoking their own commitments on Kashmir made from time to time. Pakistan got discredited with the people of the State on account of her poor performance at the national and international levels since her birth. Kashmir leadership usually got a bad name on account of its opportunism, favouritism and inability to solve the socio-economic problems of the people.

The book examines the politics and government of Jammu and Kashmir under the Dogra rule as a prologue to the independence of the State. Further, dealing with the sociology of politics in the second chapter, significant political events have been discussed in the 3rd chapter. The other two chapters elaborate the administrative design of the State and political pulls and pressures respectively. The sixth chapter describes the constitutional framework of the State after the Jammu and Kashmir Constitution of 1956. In its political epilogue, the last chapter draws certain conclusions. In addition to others, it discredits Government of India and Indian leadership, Pakistan Government and leadership and the leadership of the State for relegating the people of the State to political alienation.

There are hardly any people who I consider deserve my thanks. Peace be with my mother, who is still a source of inspiration for me and had not the good wishes of my father been with me, this work would not have been accomplished.

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CHAPTER I

Political Prologue

Political systems, or even sub-systems, of developing States are the consequence of a historical growth like those of the advanced States. Certain changes occur in response to the changes that take place as a result of the mental evolution of a people within a territorial jurisdiction and those resulting from interaction. Thus every political system is in itself a distinct model. There might be similarities but differences also exist among such models. Even a sub-system has its own peculiarities. A political sub-system is visualized only if it operates through a homogeneous social unit, with the peculiarities of representing the same culture within a broad framework of an overall system.

Representing a cultural unit and a political sub-system, the State as such might evolve a style of its own in accordance with its socio-economic needs and the national goals as presented by the small but compact leadership ; consequently, the interaction between political institutions and human life, within that system, might take place in a way peculiar to the system. Political institutions are a result of a historical process. The latter, because of socio-economic evolution and the style of different patterns, might be the outcome of human interaction. However, during the last three or four decades, especially after World War II there emerged new States or developing States, which were marked by a fervour for self-

governance. Within these self-governing territories different styles of sub-systems came into existence. In India, as a federal polity, for example, many sub-systems emerged after the enforcement of the Constitution.

Kashmir represents, within the Indian political system, a political sub-system which has its own peculiar position and style. In the beginning, it had a tendency to deaccession but since 1962, its full integration with the Indian politica lsystem has been pursued. Since its inception in 1947, this political sub-system with its parliamentary institutions within a democratic set up, had very little interaction between the system and the people. However, since 1975, and especially after the elections of 1977 to the State Legislature, a new style of interaction has emerged between the institutions and the people. In 1956, the Jammu and Kashmir State adopted a new Constitution and became a peculiar State within the Indian Constitutional and political system, under Article 370 of the Constitution of India. During the accession to India of the State of Jammu and Kashmir something was handed over to the new administration of the State. This something consisted of Government, Movement, Institutions and Promises. I shall endeavour to examine these before I proceed further.

Before the partition of India, the State of Jammu and Kashmir was ruled and governed by His Highness the Maharaja Bahadur of Jammu and Kashmir. He ascended the throne in September 1925. In 1931, there was a political upsurge and, as a result, the Maharaja initiated some constitutional reforms. These reforms were recommended by the Commissions appointed for the purpose from time to time after July 1931. A Constitutional Reforms Commission commenced its work about the middle of March, 1932 and its report was submitted in April, the same year. The Commission recommended that Legislative Assembly should be established as soon as possible and made suggestions regarding its composition, powers and functions.

In May 1932, a Franchise Commission was appointed

under the chairmanship of Sir Barjor Dalal and Sir Ivo Elliot, Bart was appointed Franchise Officer in 1933. Their report was submitted in January, 1934 and by an order dated February 24th, 1934, His Highness accepted the recommendations. It is unnecessary to dwell at length on the various stages preparatory to the inauguration of the State Legislature, called the Praja Sabha. It was, however, formally inaugurated by His Highness on October 17th, 1934. By Regulation No. I of 1991 Bikrimi, which was the foundation of the later constitutional reforms, the Maharaja reserved ultimate powers with him. On 11th February, 1939, His Highness was pleased to announce another instalment of the constitutional reforms, which extended the powers of the Praja Sabha.

In a proclamation appended to the Jammu and Kashmir Constitution Act of 1996 (XIV of 1996), the Maharaja, reiterated, "In accordance with our directions, the text of the then existing Constitution contained in Regulation No. I of 1991 has been thoroughly overhauled and advantage has been taken of this opportunity to bring that text on the lines with that of similar Constitutions of this type. Under our further direction a separate part of the new Constitution has been devoted to the judicature of the State and this part brings together not merely our existing commands regarding the Constitution and powers of our High Court of Judicature, but provides also for the establishment and functioning of a Board of Judicial Advisers for advising us in the disposal of civil and criminal appeals preferred to us against the decisions of the High Court and on such other matters as we may choose to refer to the Board of Advisers. We have no doubt that the establishment of this tribunal will meet a genuine n ed for the satisfaction of which public opinion in the State has been pressing for sometime."

Consequent upon the proclamation of various constitutional reforms, the State of Jammu and Kashmir was, by 1946 governed by His Highness, with the assistance of a Council of Ministers presided over by the Prime Minister and with the

advice of a Legislative Assembly known as the Praja Sabha, which consisted of elected representatives, nominated members and official members. For the proper administration of law and justice there was a High Court of Judicature. There was a Board of Judicial Advisers to assist His Highness with advice in appeal cases. Whilst legislation was initiated by the Assembly, subject to the rules of procedure, or by the Prime Minister and the Ministers associated with him to form the Council, all legislation had to receive the assent of His Highness before it could become law. All the activities of the State were directed by Heads of Departments who were responsible to the Ministers who held the relevant portfolios. Except in the case of reserved subjects, members of the Praja Sabha were entitled to discuss activities of any department. For purposes of civil administration the State was divided into three major divisions :

1. the Province of Jammu
2. the Province of Kashmir
3. the Frontier District of Ladakh

Consequent upon the transfer on lease of the Trans-Indus area the Government of India, the Cis-Indus area comprising Tehsil Bunji, which was formally included in the Gilgit district, was amalgamated with the Ladakh district during 1935-36. Later, Ladakh was included in the Province of Kashmir. The Revenue Commissioner was the head of the revenue admistration and each of the two provinces was placed under the charge of a Collector, called Governor. The Frontier district was placed under a Wazir. Each Province was divided into districts, called Wazarats, and each district was divided into several tehsils. Each Tehsil was sub-divided into Niabats, under a Tehsildar.

The bureaucracy consisted of Kashmiri Pandits, Dogras, non-state subject Hindus, and Mnslims from outside the State. Muslims belonging to the State were the sharers of about 15 per cent of the total gazetted appointments in the State, whereas the Census of 1941, put the total population of

Muslims at 77.11 per cent of the total population. Thus the bureaucracy, whether of higher or lower ranks, was so constituted that immediately after the accession of the State to India, Muslim employees from outside the State left for Pakistan and non-Muslim employees for the parts of India from where they hailed, leaving the State bureaucracy dominated by Kashmiri Pandits and Jammu Dogras.

Prior to 1947, the government of the Maharaja had granted the cultivators proprietary rights and security of tenure, which had been denied to them earlier under the rules of the Mughals, Pathans and Sikhs. Further, the activities of the Agriculture, Veterinary, Cooperative and Rural developments and also of the Panchayat Department were directed towards the improvement of the conditions, under which the agricultural classes lived and worked. During 1940 to 1947 agriculture and animal husbandry were saucy. Cattle census conducted in 1940, quoted by Superintendent Civil Veterinary Department, showed that there were 130 cattle to every 100 acres of cultivated land. Cattle used to perish owing to epidemics. The Department, therefore, was strengthened and certain improvements in cattle-breeding centres were introduced in the State with the aid of the then Imperial Council of Agricultural Research. According to the livestock census of 1940 the number of sheep in the State was just over 20 lacs and the number of goats, nearly 15 lacs. Though the Cooperative Societies had been established befrore 1930 and 1940, there were 15 Central Financing institutions and some 3,788 primary societies. Of the latter, 2,839 were agricultural and 949, non-agricultural. By 1947, the Co-operative movement had improved. In 1934. a Marketing Board also came into existence for organizing the marketing of agricultural produce.

In order to further rural development, the Panchayat Act was passed in 1935, providing the machinery for the creation in rural areas, of Panchayats with limited judicial powers. The first Panchayats were established in 1936. In 1937, the Panchayat Department was overhauled and reorganized and was named The Rural Development and Panchayat Depart-

ment. At the earlier stages the Department worked well but from 1942 to 1947, it played a less effective role. In the post-1947 period, however, it was regenerated with a new life.

During the period of Maharaja Hari Singh Ji's rule, the extension of the railway into the Province of Jammu was a major engineering project. Two motor-roads ran through mountainous country : one connected Srinagar with the rest of India of those days, via Rawalpindi and Abbotabad and another connected Jammu and Sialkot. These two roads, known respectively those days as the Jehlum-valley Road and the Banihal Road, joined at Srinagar to form one continuous road, which was the main artery of communications throughout the Jammu and Kashmir Provinces. This road-link was improved from time to time to facilitate the State's trade with British-India and Central Asia. Further, many other roads linking the various districts were either constructed or improved. The frontier roads, connecting the Kashmir Province with the poonch Jagir through Shopian, with Gilgit through Bandipur and with Leh through Sonamarg, were also either improved or constructed. These roads were mostly fair-weather roads.

In irrigation also, the Maharaja had, during the decade 1931-1940, gone ahead of the other previous Maharajas of his dynasty. The Zainagir Canal was completed during the same decade and the Lal Kuhl and the Martand Canal were extended. The Nandi and Dadi Canals were also constructed. In Jammu the Ranbir Canal, the Pratap Canal, the Basantpur Canal, and the Ujh Canal were also constructed prior to 1947.

During the period from 1930—47, the State of Jammu and Kashmir, showed neither an awkward nor a flattering picture of public health. Births had preponderance over deaths despite epidemics and diseases. Smallpox, plague and cholera were frequent and resulted in a large number deaths. After 1937, plague was controlled and the control of the cholera epidemic in 1935 was a distinctive achievement of the government. Malaria, Tuberculosis, infantile mortality, maternal

deaths, and leprosy were, however, on the increase. Nutrition and dietetics posed an acute problem. Sanitation, both rural and urban, was far from satisfactory. However, the construction of two big hospitals—one in Jammu and the other in Srinagar, was a good augury for improvement in public health.

Industrialization in the State of Jammu and Kashmir could never be thought of, at least in the modern sense of the word, except in some non-agricultural occupations. Among the most important of such industries were forest-exploitation, sericulure, wood-work, flour-milling, oil-milling, bee-keeping, basket-weaving, paper machie, embroidery, tailoring and making carpets, gubhas, rush-mats chicks and matches. Of the minor products from the forests and hillsides, perhaps Kuth, artemisia and resin were the most important at the time.

The following factories were in operation prior to 1947 :

1. The Rosin and Turpentine Factory (Miran Sahib)
2. The Indistine Factory (Miran Sahib)
3. The Kashmir Willow Factory (Miran Sahib) with a branch at Srinagar
4. The Half Wrought Factory (Baramullah)
5. The Santonin Factory (Baramullah)
6. The Match Factory (Baramullah)
7. The Drug Research Laboratory (Jammu)
8. The Sericulture Factories (Srinagar and Jammu)

Kashmir has always been famous for its salubrious climate, beautiful valleys and magnificent scenery. Even hundreds of years ago visitors undertook arduous journeys to be able to visit the Valley and their number has steadily increased from time to time. During the pre-1947 era the rulers of this State always tried to improve the transport and communication system to attract more and more visitors in view of the importance of tourism to the State's economy ; many cottage industries, shopkeepers, house-boat owners and many other depended on tourism.

The main sources of the revenue of the State were customs, trade, forests and land revenue. The total revenue of the State for the year 1945-46 was only Rs. 557.31 Lakhs. The chief sources of income were customs (Rs. 166.49 Lakhs), forests (Rs. 114·05 Lakhs), commercial departments (Rs. 129.81 Lakhs) and land revenue (Rs. 73.28 Lakhs). This shows that the people of the State then were generally poor.

The problem of unemployment existed in the State prior to 1947 also, but with a different magnitude. Most of the uneducated masses did not know what was meant by the term, unemployment. They had never enjoyed continuous employment from year to year and to be out of employment temporarily did not, in their estimation, constitute what is usually understood by unemployment. The census of 1941 showed that 2675 or 70 per cent, of the total number of the educated unemployed belonged to the Kashmir Province and 1069 or 28 per cent to the Jammu Province. Of all the districts the maximum educated unemployment was found in Anantnag with 2066 or 54 per cent of the total for the whole State. Srinagar was then part of the same district and contributed largely to the big percentage. The number for Srinagar was 1391 or more thad 36 per cent of the total of the State. The figures for the Jammu city presented a big contrast ; only 133 educated persons belonging to the Jammu city were shown as unemployed.

The first people's upsurge took place in July 1931. Many causes had led to it. Inflation in Europe and elsewhere had told upon the already weak economic condition of the people. The land tenure system had reduced them to abject poverty, as the land was held by Zamindars either in "Haqiassami" or in direct tenancy under the State. Exploitation by money lenders, numberdars and zaildars added to the woes of the people. The workers—peasants and other kinds of labourers—were in doldrums on account of misgovernment, under the Maharaja. The government and the masses had no meeting ground. The State was very backward in the field of education. In 1921, literacy in the State was assessed at 26 per thousand, which

rose to 41 per thousand by 1931. In the Kashmir Province there were only 35 literates per thousand in the latter year. Further, all types of freedoms were absent. The immediate cause of the upsurge, some attribute to the British manoeuvres on account of the strategic importance of the State.

Prior to 13th July 1931, the Maharaja's reception from outside the State, created a controversy between Kashmiri Pandits and Muslims. Some posters alleging defilement of the holy Quran by a Hindu Policeman, Sergeant Labba Ram in Jammu was enough provocation to the people to rebel. A meeting was held at Khanqahi-Mualla, at the end of the meeting one Mr. Abdul Qadeer delivered an inflammatory speech and so a criminal case was instituted against him by the government. On 13th July people in large numbers assembled outside the Srinagar Central Jail where the hearing was to take place. The police firing on these people resulted in the death of more than seventeen persons.

Earlier Sheikh Mohammad Abdullah had emerged as a leader and he and his camptoroits were jailed. The Maharaja and the leaders tried to arrive at a compromise but failed. Kashmir Day, was celebrated on 14th August 1931. A complete hartal was observed in the State and, at the call of the All-India Kashmir Committee, the day was also observed in almost all the big cities of India. During September, the people of Kashmir demonstrated against the despotic ruler in Srinagar with crude weapons, in their hands. This 'Narcho' demonstration was an eye opener for the Maharaja. The movement against him thenceforth an organized one ; it was geared to action in 1932. Its first meeting was held in Srinagar under the Presidency of the Sheikh in 1933.

From the platform of the All Jammu and Kashmir Muslim Conference Sheikh Mohammad Abdullah, not only invited non-Muslims to cooperate but also tried to keep the party above petty communalism. After many dialogues with Kashmiri Pandit leaders the Sheikh was of the opinion that the All Jammu and Kashmir Muslim Conference should be

converted into a more secular political party and named it All Jammu and Kashmir National Conference. Consequently, at the sixth annual session of the Muslim Conference the Sheikh observed that to organize joint action it was necessary to re-christen the organization as a non-communal political body by introducing certain amendments in its constitution and its rules. Consequently, the Constitution or All Jammu and Kashmir Muslim Conference was amended through certain procedures at a series of conference meetings and finally the amended Constitution was adopted at a special conference on 11th June, 1939. This Constitution was renamed as the Constitution of the All Jammu and Kashmir National Conference.

The movement for the freedom of the State continued with the National Conference as the vanguard of the people. Equipped with the Constitution, the Conference leaders impressed upon the people that they were fighting for the high ideals of democracy and socialism. They also fought for the complete idependence of the State.

The struggle for freedom became a continuous struggle of the masses of the Jammu and Kashmir State. The Maharaja's government tried to appease the people through constitutional reforms, but failed to implement the "Naya Kashmir" programme presented to it by the National Conference. A document known as "Naya Kashmir" was drafted by the National Conference at the invitation of the Maharaja's government with a view to establishing a welfare state. "Naya Kashmir" is in fact the manifesto for establishing a welfare state. It is socialist in essence and content. Like the "Communist Manifesto" it is brilliantly simple in its construction. It can safely be divided into three structural sections. The first deals with the constitutional framework for the future of Kashmir; the second, with economic planning—including agricultural and industrial planning; and the third, with the socio-educational scheme for the future of Kashmir.

The Maharaja's government failed to honour its commitment to the "Naya Kashmir" programme and the National

Conference raised slogan of "Quit Kashmir". The "Quit Kashmir" movement challanged the legality of the Maharaja's rule in unequivocal terms. The National Conference leaders from every platform demanded the revocation of the Treaty of Amritsar—a sale deed recognizing Raja Gulab Singh as the ruler of the State of Jammu and Kashmir, on the grounds of its illegality and antiquity. The movement spread like wild fire and in every corner of the State people rebelled against the government and the princely ruler. There were mass arrests in every village, town and city, and the movement had the appearance of a total rebellion. Hartals continued for many days. The army and the police had been given a free hand, by the government. The tense and brutal situation continued for some months and finally the trial of Sheikh Mohammon Abdullah for "treason" started. The Sheikh was sentenced to three years' imprisonment on each of his so-called charges, and was to pay a fine of rupees five hundred. The leaders and workers continued to be behind the bars. In the meantime, many changes occurred in India and the State.

In 1947 the British labour government, granted independence to India, creating two separate dominions, India and Pakistan. Before 15th August 1947, the day India became independent, Shri M.K. Gandhi, Shri Nehru and Acharaya Kripalani visited Kashmir separately and met different leaders in jails and also the Maharaja. Shri Nehru was, however, arrested at Domel on the Srinagar-Rawalpindi Road. The Sheikh was released on 29th September, 1947, and subsequently his workers also were released. The National Conference had a mass base but there were other parties as well. The Kisan Mazdoor Conference, claiming to be socialist, through a resolution, advised the Maharaja to join Pakistan. After considering the issue at its working committee meeting, it said, "The Working Committee holds the view that the majority of the population desire to accede to Pakistan, and the welfare of the 39 lakhs of peasants and workers also lies in it." The Muslim Conference decided that Kashmir should accede to Pakistan and advised the Maharaja to take steps in that direction. This party was the result of a split in the

original Muslim Conference, caused by the decision of Sheikh Mohammad Abdullah and his lieutenants to convert that party into the National Conference and to associate with the leaders of the Indian National Congress.

Similarly, the Kashmir Socialist Party also adopted a resolution asking the Maharaja to accede to Pakistan. However, the compatibility of the Indian National Congress and the National Conference drew the latter to accede to India. The Sheikh on this occasion said that the policies of the National Conference were progressive and that its day-to-day demands coincided with the national outlook. The Maharaja because of persuasion by Indian National Congress leaders and the commitment of the National Conference leaders, decided to submit an instrument of accession to the Governor-General of India. The accession was accepted and Indian troops moved into Kashmir to defend Maharaja's territorial jurisdiction against the raiders from Pakistan. As a result of the conflict, parts of the State of Jammu and Kashmir went under the control of Pakistan, which called them "Azad Kashmir", and the rest of the State remained with India. The accession to India was held temporary under the instrument of accession, and the position of the State, visa viz the Indian constitutional framework, was to be determined under Article 370 of the Indian Constitution.

Kashmir's inherited few institutions and these, too, were lost because of the political uncertainity from the end of 1946 to the end of 1948. These had been *bureaucracy*, established by the Maharaja, the *Praja Sabha* and the *High Court* of Judicature established after the 1931 upsurge, on the recommendation of the various commissions set up for the appeasement of the Muslims of the State.

During Maharaja Hari Singh's term of office as senior member of the then State Council, Maharaja Pratap Singh issued orders to provide for (1) Employment of state subjects only to ordinary vacancies and (2) Grant of lands for house-building and other purposes to state-subjects only. A Committee of officials and non-officials was set up to suggest a definition of the term state subject. The definition was proposed by the Committee and accepted by His Highness. The children of the soil were thus granted protection in the matter of recruitment to government service and several other privileges as against outsiders. This protection is still upheld by the laws of the State, though it has got slightly eroded over the years. In pursuance of this policy, thirty state subjects were deputed to Europe, the USA and British-India before the World War I (1939-45) for education in civil engineering, architecture, planning, medicine, veterinary science, pharmaceuties, horticulture, forestry, printing, law and public administration. Consequenty, in April 1945 there were 5,070 Muslim officials, including 150 gazetted officials out of a total strength of 13,790 officials including 525 gazetted officials in superior service. The data provided by an official hand-out shows that only 40 per cent of the incumbents were from the majority community. If we take it to be a case of governmental exaggeration, the percentage might have been even lower.

The Praja Sabha was established in 1934. The right to vote was given only to 6 per cent of the population, including a number of women. The Sabha consisted of 75 members, 60 of whom were non-officials including 33 elected members, twenty one were Muslims, ten Hindus and two Sikhs. The constitutional advances by the Maharaja had the following features :

(*a*) the elected element in a house of 75 members was raised from 33 to 40 by the addition of 7 special constituencies ;
(*b*) the Sabha was given the right to elect a Deputy President from amongst its non-official members ;
(*c*) provision was made for the appointment of non-official members as under-secretaries to work with Ministers ;
(*d*) the Praja Sabha was given the right to vote except with regard to a few non-votable items on the demands of the budget ; and

(*e*) the Sabha was given the right to pass all legislation pertaining to taxes as distinguished from fees and penalties.

A High Court, comprising a chief justice and two puisne judges, was established by the Maharaja in March 1928. The judges held their offices during the pleasure of His Highness. In 1930, in view of the improvement in the judicial administration of the State, the jurisdiction exercised by Residency Courts in certain categories of civil cases was ceded to the state courts. On the whole the judicial system was modelled upon the British Indian laws. Later, the jurisdiction of the High Court was extended to Poonch and Chenani Jagirs as well.

Ignorance, illiteracy and poverty had consumed the people of Kashmir. The misgovernment by the Dogra Maharajas, after the shameful Amritsar Treaty of 1846, had sapped the vitality of the people. The land tenure system was the most sensitive issue in Kashmir ; it reduced the peasantry to the position of drumb driven cattle. The land was held by the zamindars, landlords, either in *Haqiassami* or indirect tenancy under the State. The zamindar, could eject the tenant at will and demand from him any portion of the produce. In fear of the landlord, the tenant used to hide part of the paddy produce of the land in large 'Macha' (Big earthenware pots) which he kept buried underground so that he might have something to feed his family and himself. The State was theoretically the real owner of the land. Hence landlordism was the first problem for the leadership to tackle after 1947.

In the field of education the State was in an embarassing position. In 1921, literacy in the State was assessed to be 26 per thousand. This figure rose to 41 per thousand in the past decade, the figure for the Kashmir Province being 35. The number of scholars in government and aided educational institutions was 44,601 in 1925. The increase in population led to a marginal increase in the number of pupils which was

over 1,34,000 in 1946. The total education budget during 1946-47 was only Rs. 36.80 lakhs. Women's education was in the doldrums.

On the economic front, the State of Jammu and Kashmir had been rendered a pauper by the beginning of 1947. The people were under fed and had little purchasing power. The food grains rationed by the gavernment in the Jammu and Srinagar cities were supplied at rate of 15 seers per head per month for Rupees two and eight paise. Though the rationed food grains were subsidized, they were too costly for the purchasing power of a majority of the consumers. Under the levy system villagers were virtually fleeced of part of their food grains in order to supply them to people in the cities. The formers were left with little to eat.

The communication system was faulty and poneys were used to transport goods. Only half of the Jhelum-Valley Road was tarred. The Banihal Road was not at that time smooth enough for motor vehicles. The road traversed an attitude of 9,000 ft. through the then Banihal tunnel. The Leh Treaty Road, (as it was called before 1947) connecting Srinagar with Ladakh and leading to other parts of Central Asia, was only a bridle path. The 193-mile long Bandipura-Gilgit Road, was also only a bridle path. The situation was further aggrevated by the fact that most villages and remote areas were without road links. The only means of communication among the villages in the Valley was pedestrian in nature. This affected not only the supply of essential commodities but also the commercial life in the State.

Telegraph and Telephone services were inadequate. Wireless services did not exist. Inadequate water supply hindered the development of agriculture in the rural areas. The State-owned Sericulture industry had reduced labour to starvation and they had rebelled against the government many a time since 1846. Industrialization, which could have been a good source of employment, had made little headway in the State. However, army expenditure rose from Rs. 47.50

lakhs in 1939-40 to Rs. 89.69 lakhs in 1944-45. In 1945-46 the expenditure amounted to Rs. 87.94 lakhs.

By the beginning of 1947, political issues had become more complicated. During the years 1931 to 1946, the freedom struggle launched first by the All Jammu and Kashmir Muslim Conference and from 1939 onwards by the All Jammu and Kashmir National Conference, led the Maharaja to think in terms of improvements in politics and government. The result was appeasement through the political mechanism. However, the climax was reached at the time of the partition of India. The Maharaja had to accede either to India or to Pakistan and isolation from either would not be feasible for him. The issue was very grave for the Maharaja as well as for the leaders of the National Conference. The Maharaja acceded to India with the approval of the leader of the National Conference, Sheikh Mohammad Abdullah. It is a safe assumption that the former was aware of the fact that his accession either to India or to Pakistan would mean his loss of power.

"Naya Kashmir", the manifestation of the total personlity of Kashmir, reflected all kinds of promises. There were promises regarding the establishment of a constitutional government, economic planning and socio-education schemes for the future of Kashmir.

The fundamentals of the framework called for a responsible government of the democratic form. The framework consists of forty nine Articles. These Articles envisage a National Assembly, (to be elected on the basis of adult franchise) to be the legislature of the State. Forty thousand voters could elect one member to the legislature, the tenure of which was to be five years.

The legislature was to elect its President and other office bearers and to prescribe rules of business. Every bill passed by the Assembly was subject to the assent of Maharaja of the State. It visualised that the National Conference had accepted constitutional monarchy on the British pattern,

giving the Maharaja's dynasty the right to act as the royal family.

The proposed constitution provided privileges to the members of the National Assembly, which was to have the right to appoint commissions etc. The Maharaja had the right to dissolve the Assembly but within two months of its dissolution, he had to order fresh elections. As the head of the executive he had the powers to summon, prorogue and dissolve the Assembly. The head of the Cabinet, was to be the majority leader in the Assembly. He was to be invited by the Maharaja to head the Council of Ministers, which was to be responsible to the Legislature.

The constitutional framework provided for a judicial system in a hierarchical manner with Urdu as its language of communication. Further, it defined nationality, the rights of citizens, the methods of elections, the organisation of local governments and other related matters. It also envisaged the duties of the citizens, including the compulsory duty to defend the State and the rights to be granted. The latter consisted of the right to leisure, old-age pensions, medical aid, and education ; and equal opportunities for women and men and maternity and legal protection for the former.

One of the distinctive promises made in the document was the abolition of private property. "Naya Kashmir", as a document, consists of fifty Articles only. The last Article (viz. Aricle 50) is the pivotal one. It is in essence a reiteration of the socialist principles of economy. It lays down that the economic life of the State shall be determined, conducted and regulated in accordance with the objectives of State Planning, for which a State Planning Commission would be established. It aims at greater production, improvement in the standards of living and the creation of capability for national defence.

The Article, under its sub-title "National Economic Planning" proclaims that the objective of the National Conference is to create an egalitarian society, in which every individual shall have the right to develop himself and enjoy a good standard of living, as means of exploitation will be

eradicated and equal opportunities will be provided for all. In this context it visualises that the State shall carry its business within democracy and everything in accordance with planned economy based on the principle of curbing competition and exploitation. Consequently, the planning promises a cooperative method on the operative side of it, for which it can appoint a Planning Commission, and further improve agricultural production through agricultural planning, which, it declares will be incomplete without an industrial structure. The constitution visualised industrial planning and nationalization of the existing industries.

Being a comprehensive document, it details socio-educational and cultural schemes also. In the social sphere the constitution includes health, education, cultural organizations, insurance and the right of women. One of the fundamental duties of the State is to lookafter the health of all its citizens. To carry out health schemes a "National Health Council" is to be established. It is to consist of doctors, physicians and financial advisors. In the field of education it promises that the State will establish a National University, organise research, impart technical education, establish colleges and make education free upto the secondary stage. It also promises a network of libraries all over the State. It envisages the establishment of an organization for cultural and social uplift. To further this aim and to foster the State's composite culture it promises to establish a "Cultural and Social Council".

These problems and promises were, consequnetly, the first concern of the new government of the National Conference in the post-1947 years. Before it could effectively deal with the socio-economic problems and promises, the politics of accession so pre-occupied the leadership that it rendered government ineffective. I think it was the politics of accession and the failure of the government at the socio-economic front during 1947-53 that caused the fall of the Sheikh government in 1953. Before examining the other factors in the evolution of Kashmir politics and government, it will be proper to examine the politics of the State in relation to its society.

CHAPTER II

Politics and the Body Politic

In their written history of nearly three thousand years the people of Kashmir had learnt only one lesson. Though not consciously reflected, this lesson proved in behavioural operatives that the common man drifted towards a virtual existentialism : existence before essence. The tyranny of a minority during their past had made people either mystics, saints and reshis or the like—it had made them to learn the lesson that politics is the worst trade, which they should not adhere to. Consequently, a typical Kashmiri seems to be existentialist in behaviour, history, social relations, literature and finally politics. In effect, the Kashmiri in his folklore projects as nothing but "Yeeravan-naav" or anarchy. This reflects his attitude towards politics. Nevertheless, he always fought for egalitarianism.

Consequent upon this urge which became pronounced by 1931, Kashmiris gave the fullest support to its leadership. This leadership, to be fair, worked sincerely for self-rule and independence. Alas, when politics of accession surfaced and power was placed in their hands, the real trouble started. As in other parts of the third world it was experienced in the State that political sphere was not sharply demorcated from the spheres of social and personal relationship. The top brass of the National Conference revolved round the issue of

prestige, influence and personalities. The Sheikh had in the pre-1947 era acquired the personality round which all people could rally and even till this day there are people who believe that the accession itself was the outcome of the Sheikh's personal relations with Late Pandit Nehru.

The ascendency to power in post-1947 resulted consequently in cementing personal relations of the Sheikh with the Nehru family. At the same time, in government, first, as Chief Emergency Administrator in the State and later as Prime Minister, the Sheikh was influenced by new emergency elite amongst Muslims and other section of Kashmir society. The new emerging elite did not only comprise of Bakhshis, Karas, Burzaz but also Begs, Kochaks, Bachas and many others from different areas of the State including far flung areas of Gurez and Karnah. The petty capitalist class and others representing Maharaja's elite were absorbed in the new one, some of them loosing their foothold.

Kashmir represents a different sociology at the rural and urban levels. During 1947-1953, the Sheikh's ascendency provides a dichotomy of political attitudes and behaviours. Rural people were more orthodox and tradition-bound than the urban. Conscquently, the social status determined the political behaviour. The slogan "Land to Tiller" during this period by the National Conference determined the party's sphere of influence. However, the educated class, by virtue of the politics of the sub-continent, willy nilly, did not subscribe to the decision of the National Conference in respect of accession. The society, especially in Kashmir became alienated from the political elite and in rural areas a new class of vested interests emerged on the basis of personal relations and personal gains.

Political sociology of Kashmir reveals that Kashmiri is non-conformist in politics—whether it is rational or not is debateable. However, the fact remains that Kashmiri is by and large existentialist. Professor Z.M. Quraishi's (Delhi nUiversity) formulations are revealing—he assumes Kashmiri

to be a practical people. To him their perceptions of personal and collective interests are clear and they rarely fight shy of pursuing them persistently. According to him, "They look around for concrete advantages rather than from shadow of rights. They have a strong propensity to utilize their individual or social goals, even if, they may not find the institutions satisfactory to their views of ultimate good." Further Quraishi believes Kashmir society being characterized by its close-knit network of relationships. He thinks that a small society with a strong sense of internal solidarity and external exclusiveness has its own norms of social behaviour and rules of political game. All political affiliations, according to him, are dependent to these relationships in the Valley.

There was the lack of clear political objectivity amongst the Muslims of the State, during 1947-53. Most of them thought in terms of accession to Pakistan, placing thus great limits on the effectiveness of those who intended to perform a political role. Even their role was doubted after 1947. The dominant National Conference worker or agent could make a headway only if he was related to a social structure that safeguarded him against the social wrath. Consequently, he had to develop such personal relations with the governing hierarchy which formally defended him against the opposed forces. The Pirs, who, prior to 1947 had chaks or jagirs or were included in the elite, being a dominant educated class, stealthly joined the service class and secured their position which depended formerly either on lands, money lending or religious leadership. However, other educated members of other strata of Muslims, started getting a foothold in the bureaucracy immediately after. This attraction for other stratas, however, became more pronounced during Bakhshi's rule, starting from 1954 onwards.

Two great virtues reflecting on the personality of Kashmir sociology are non-communal politics and tolerance. This secular indentification, however, does not mean that Kashmiri leadership represents different communities in general even those villages having K.P's in domicile do not find Pandits in

the National Conference cadre or any other party. Though the Congress, which is National Party, has some members, yet does represent other communities only in name.

During freedom struggle leadership was held in reverence the Sheikh commanded sincere personal and political allegiance even to the extent that his name was believed to be carved on the leaves of the trees. Though this type of allegiance was shattered during the periods 1947-53 it touched new heights again during the periods 1957-1972. Presently, however, this allegiance is apparently lost in the light of common day.

The National Conference, while representing a total political life before 1947, in essence promised a political life for Kashmiris only in the sense of majoritarianism, whereas, in the years after independence it desired to fight against communalism. In the post-1947 period the majoritarianism was being overshadowed by the slogans of socialism, secularism and democracy. All these slogans had nothing to do with the common man in Kashmir either during the National Conference rule or the Congress rule. However, if the National Conference represented a total way of political life during the freedom struggle, it believed that leadership's attitudes and views on all subjects would become the commonly shared attitudes and views of the entire population. That is why, we find that those who had different views in the National Conference, rarely figure in the literature on the freedom struggle or in the post-independence literature, excepting for example, P.N. Bazaz works.

The dichotomy which Kashmir sociology presents is the political alienation of Kashmiris during the period 1947-77. During this period we find that the average Kashmiri believes politics to be normless, elections to be a fraud and the character of political loyalty a matter of expediency. Kashmiris gave to the leadership of political groups a high degree of freedom in determining matters of strategy. Because of this tactics many political activists in the post-independence turned

rebellious or were driven to the gallows. Though these rebels in the Valley were not in a position to bring a revolution leading to de-accession, yet non-participation in political issues was aggravated. First an outstanding front rank leader Mohi-ud-din Kara fell out with the National Conference and started a new organisation viz. "Political Conference". Later the "Democratic National Conference" was initiated under the leadership of Late Ghulam Mohammad Sadiq. A little later some militant organisations like the "Alfateh" came into existence. The C.P.M. and C.P.I. also re-organised their parties and a few of Naxalites also were induced in Kashmir politics. Even the Communists were divided on their loyalties to india or Pakistan. Consequently, political literature of Kashmir introduced the Muslim Communist and Hindu Communist, a glaring contradiction in terms. The folklore continued to despise those who joined political hierarchy but respected the bureaucracy and consequently the political culture drifted to a job-hunt.

The job-hunt flourished from the 9th August 1953 uptill the fall of Bakhshi Ghulam Mohammad, the ablest administrator during the post-independent period. During the period of Bakhshi an upstart class emerged and black money multiplied. This practice is still on increase.

Since the National Conference came to power the political process is vitiated by the lack of integration among the participants and the reason for it, in the words of Lucian W. Pye is put "the lack of a unified communications system in the society". Kashmir society is characterised by the fact that 95 per cent people live in villages. The urban cities, like Jammu proper and Srinagar, are a contrast to the more traditional village level of politics. The conflicts that are central to Srinagar or Jammu have only a remote relationship with the village level conflicts. That is the reason why we find some upsurge in Jammu or Srinagar from time to time and the people living in villages are not involved.

Similarly, those who participate in the political life of villages have no relevance to the State politics. That the

Mujahid Manzil is visited by the Plebiscite Front member or now the National Conference worker at time, does not prove the political communication at village and urban levels to be realistic. This could have been averted and integration could be possible but for the lack of communication. No doubt, a lot of improvement in communication has taken place since 1947, but it is far from the desired level. Areas like Gurez. Karnah, Chasool in Ladakh, Poonch in Jammu Province, prove the lack of mobility that integrate the political participation both at village and city levels. Further the lack of physical contact leads to the lack of political communication between the society on the one side and the leadership on the other. The radio and television have improved this communication, but it was subjected to the contradiction of political control. Radio and television being under the Central Government, political communication becomes ineffective.

Kashmir provides a dichotomy since its independence on account of political forces of Srinagar or Jammu dominating over the entire State. The farce of industrialization that is taking place in urban areas, reveals the vast gap in development between the rural and far flung areas on the one hand and that of urbanized areas on the other. The agricultural areas, having values and concepts of their own, differ from the urban values. Consequently, during the thirty years of independence, the State politics remained urbanized. Even during the time of Mr. Mir Qasim, who belongs to a distant village, no change could take place as he was more influenced by urbanized elite than by any rural leader. Assuredly this was one of the reasons that caused him to step down in favour of Sheikh Mohammad Abdullah. The Sheikh's capture of power in 1975 was, however, influenced by Delhi too.

Since 1953, two dimensional political activists were observable at the Kashmir political playground. Uptill 1953, the roles were not cleverly played and if played they were underground. During Bakhshi's regime, the political activists, whether overt or underground, were small in number, for Bakhshi, a shrewed administrator and politician had very well

grasped the sociology of Kashmir. Surely for this reason, he rebuffed a press reporter on the query that the Sheikh claimed having forty lakhs of people with him by saying that he too had the following of forty lakhs. In the post-Bakhshi regime there was a higher rate of recruitment of new elements to political roles and to political activists. Assurdly, the Nawakadal murder case, the Islamia College case, the Alfateh and other political activists like Jamiati Tulaba reflect this tendency.

Kashmir politics represents presently a political contradiction which is purely a social contradiction in essence. The older generations stand by what they have inherited and carried them with, the younger generations are neither modernized in politics nor have they set any political goals. They would accept secularism but are apprehensive on account of the communal riots in other parts of India. They do not reconcile with the idea of riots in Muradabad, Ahmedabad, Aligarh, Delhi, Lucknow and other places. At the same time the Iranian revolution has its own impact on some sections of the youth. They are looking forward to an Islamic revolution in Pakistan and the rest of the Muslim world. They derive their inspiration from the interpretations of the Quran and the Sunna as provided by Maulana Maudoodi. Still others continue with the acceptance of the interpretations of the Schools of Nadva and Devband leaving aside the Hanifites and Shafis or Hambilies. There are some who represent a progressive line of thinking, are divided under the Schools of Peking and Moscow. It is a small number but even these people upholding the cause of Secularism, Socialism and Democracy, get confused at its operations. These democrats cannot justify democracy when confronted with the counter argument that Kashmiris were denied the right of fair elections for all the years uptill 1977. Similarly their socialism loses ground when the governments have failed to nationalize orchards and transport. Still further the commercial classes including the carpet manufacturers who exploit a fairly large number of people including little children still remain untouched. Thus, as Lucian W. Pye, puts it, "Political process

is characterized by sharp differences in the political orientations of the generations". This confusion in political orientations is further aggravated by the propaganda on both sides of the cease-fire line. The Government of India project and justify their own stand and Pakistan stands by her own commitments on Kashmir. Even a poet like Mahjoor had been disillusioned by the end of his life in 1953 as revealed by his later poems and the intellectuals like P.N. Bazaz, had to shift from one stand to the fiat accompli.

All along the political history of Jammu and Kashmir since 1947, one is apt to remark that decision making in the State is characterized by dictatorial tendencies. Discussion or the consensus has so far had no relevance. The freedom of the press and platform mostly was jeopardised. Actually, there has been no political discussion in the real sense. Delhi is partly responsible for it, because of the important decisions were carried through their tutelage in Kashmir. For example, de-throning of the Sheikh in 1953, installation of Bakhshi Ghulam Mohammad and of Ghulam Mohammad Sadiq after the theft of the sacred relic and Sheikh's re-entry into politics through the resignation of Mr. Mir Qasim in 1975, are decisions which have no relevance to political discussion. Though Kashmiris are well-informed about political events yet they were rendered apathetic toward politics. The outburst of violence perpetrated by Jamiat-u-Tulaba and Jamat-i-Islamia (July and August 1980) reveal that no revolution could be possible owing to non-participation of the masses with the movement. Pakistan endeavoured to utilise the disaffection among orthodox and conservative fundamentalists against India and almost imported a revolution in the Valley in 1965. Sheikh Mohammad Abdullah who was out of power in those days was non-commutal, if not a secret sympathiser. But the revolution bitterly failed. It is surprising that sporadic uprisings and protests against India took place after the hostilities between India and Pakistan came to an end. Indian position in Kashmir would have been weakened a great deal if civilian population made the Valley rose against the so-

called 'outside' while Indian soldiers fought on different fronts to defend Kashmiris against Pakistani invaders.

The role of the bureaucracy is really discouraging. Mostly, drawn from Kashmiri Muslims, it represents all types of classes of society controlled in a number of cases by an officer from I.A.S. drawn from the Muslim minority outside the State. Though exceptions whereby Chief Secretarys were drawn from the majority in Kashmir, yet the heads of many important departments come from outside. There is common plea and the decision makers are made conscious of it that talent or personnel is not available in the State. Even the University teachers are mostly recruited from outside on the plea that talented people are not available in the State. This is the same argument as the British advanced against granting freedom to the Indian sub-continent. Kashmir as a peripheri, in India's federal system, is being apprehended by Delhi to be secessionist and Kashmiris are apprehensive of being run over by the majority living in other parts of the country, Delhi is interested in abrogating constitutional guarantees and Kahsmiris are eager for their retention. Presently, there is very little left in Constitutional provisions in favour of Kashmiris, after the Sheikh's accord in 1974. Consequently, in the tussel of war between the Centre and the State during last three decades the bureaucracy furthered their own ends. Corruption has in all its indices increased and even the great charismatic leader has not been able to control the evil. There is another bureaucracy Kashmiris have had to meet, viz. military bureaucracy. In this division one could include the Indian Army, the B.S.F., the State Police and the Kashmir Armed Police. During the last thirty three years the Indian Army and its auxliary forces are considered to be saviors of the people and the guardians of territorial integrity of India, but on July 26 and 27, 1980, what happened from Batawara to Chandmari (Srinagar) military post is unimaginable. Without going to the value judgment one would like to know who was interested in acting like that. The Commission of enquiry into this incident has already reported, whosoever may be responsible, the fact remains that the army behaviour in Kashmir has all along its

history of defence of Kashmir been commendable. The Kashmir police on the other hand has no such claims. It has usually not been fair. Eversince the independence in 1947, the role of the police has not been satisfactory, in particular, since the fall of the Sheikh in 1953, the police has wielded enormous influence over the bureaucracy and the political amatuer. Its hand in administration is highly felt.

Further, the sociology of politics in Kashmir reveals that there are hardly any organized interest groups, with clearly defined goals. We find in the State many trade unions, peasant association (Kisan Sabha) transport association (K.M.D.) and Chamber of Commerce but none of them acts as a pressure group with functionally specific roles. During the month of April, 1981, the Central Taxation raids on business magnites resulted in sharp reactions from the chamber of commerce. However, when they called for a Bandh, they faced a total failure. They act only as protective associations. For they do not place their goal before the public and instead of looking toward the special favours on particularistic rather than on universalistic considerations from the government. During the elections in 1977, the K.M.D worked against the National Conference but when the Sheikh came to power, the same looked for favours from his government. Consequently, Sheikh had to justify the 25% rise in the bus fare in June, 1980, even though the public refused to subscribe to the view. Similarly, in most of the organizations the tendency of getting favours on particularistic considerations is a phenomenon that has uprooted the National Conference from the common man.

One of the sociological problems inherited by the Kashmiri in its history, unlike the Western social systems, reflecting on his political processes, is the lack of cohesion and unity with regard to political commitments. The folklore in Kashmir reveals that the Kashmiri is closer to the outsider (Par Daruk) than the insider. It means that he sympathises with the outsider to rule and govern instead of cooperating with each other within his own community. In the historical perspective of Kashmir, one finds its relevance and authenticity with a few

exceptions. However, it places on record that the sociology of Kashmir requires no commitment and is existentialist. It is the outsider who provides him the material to act. This dichotomy is revealed by two events. After the execution of Late Zulfiqar Ali Bhutto the reaction was so sharp that the unruly elements burnt the copies of the holy Quran found in the houses of the workers of the Jamat-i-Islamia and Ahmadyas. On the other hand, in July and August, 1980, (Military versus the Public) the events in the Valley reversed the position. If the public opinion was anti-Pakistan on the execution of Zulifiqar Ali Bhutto and some believed it was hatched by Indian Intelligence, the opinion in August, 1980, was hatched by Pakistani elements in Kashmir. Consequently, the zeal displayed on both the occasions. This is a serious socio-political problem which remains so far unexplained.

The attitudes and values in Kashmir have their own complexity. The society is mostly represented by rural areas and the urbanized areas are Srinagar and some towns like Shopian, Sopore, Baramullah and Anantnag. Town in Baramullah district especially Sopore have a genuine economic problem. Having close proximity to Rawalpindi and Muzaffarabad and Gilgit via Bandipur, it has lost its commercial importance. The district produces the largest quantity of fruit but its economic system has been shattered—it takes twenty four rupees to carry a box of apples to Delhi. Consequently, its net profit is minimal. Bandipur has lost its significance since all routes passing through the township to Central Asia were closed in 1947. Yet another dilema of the sociology of politics reveals itself in terms of religious values and attitudes. Kashmir power-structure lies in the Hanifite Muslims of the Valley and of the Jammu Province. These Hanifites are divided on two religious scores—one goes on the path of cultural orientation looking for their religious inspiration to the shrines located at Hazratbal, Khanakahi-Mualla and Khanyar and Mukhdoom Sahib, whereas, there is another group conservative in religious attitudes and are named as Ahali-hadis. Some others associate with Nasratul-Islam. Shiates also constitute a good chunk of society having their centres at Hassanabad and

Zadibal in Srinagar and also at Budgam. Political cleavage is discernible in terms of *Bakras* and *Gadas* having their own history since 1931, and presently, led by Maulana Moulvi Mohammad Farooq and Sheikh Mohammad Abdullah respectively. Recently, both these leaders have lost some kind of support from their followers. This is in consequence of the contradiction in their political theory and practice of it.

Still further, we have Sikhs, Kashmiri Pandits, Dogras and Budhists. All of them having allegiance to not only India but to those who come to power in the State. Though Muslim and Pandit educated classes have lost faith in the Sheikh yet common man has still reverence for the Sheikh. The crisis in Kashmir during July and August 1980, (Military versus Public in Lal Chowk) has deteriorated the image of the Sheikh. By and large, leaders find it difficult to misguide the people presently as the latter are becoming more conscious day-by-day. Without understanding the attitudes and the values of the personality of the Kashmiris in its universalistic tendency, the leaders look toward Delhi leadership and the bureaucracy, for guidance and support. The position of each Chief Minister since 1947, has remained unchanged and bridled. Before the Sheikh came to power in 1975 it was felt that he would ooze courage, reliance and confidence but he too had to look to Delhi for political as well as administrative inspirations. Whenever, he tried to be independent he had to face conflict. In 1980, there appeared a crisis in relationship between the Centre and the State leadership but since Rajiv Gandhi's entry into politics at the centre the confrontation has swung to amicability.

Politics in Kashmir, unfortunately has never been a means to solve social and economic problems. It has rather aggravated the problems than diminishing them. In the social shpere it has failed to provide education and medical help to all. No social problems like high expenditures on marriage, evil of divorce and dowry were so far eradicated. Political decision is not the outcome of a public dialogue but emergeds out of the meeting of leaders on a feast served at a marriage

ceremony. Economically, the rich has become richer and the poor poorer and corruption is at its pitch. The middle class is in a crisis in the midst of transition. Leaders have amassed wealth and are living an attractive life and the common man is neglected. The upstarts, orchadists, P.W.D. contractors, forest lessees and others enjoy luxurious life.

The Sheikh's charisma is a peculiarity of Kashmir sociology. Though, most of the people accept that his inconsistent political goals have been responsible for warting the progress of the nation, yet he has an appeal which is unparrelleled. With all the opposing forces together, in 1977, he defeated all and gained more than two thirds majority in the State Legislature. He has an appeal in most of the sections of the society. In the last elections not only Hanafite Muslims, who form the power base in the State, but even Kashmiri Pandits, Sikhs and other minorities voted for his party. In this context, it was a genuine question "Who after the Sheikh ?". To this, the Sheikh sought answer—he introduced his own son Dr. Farooq in politics. The induction is in no case formal—he has firmly been rooted in the National Conference by electing him to its Presidency.

The power base finds dilema on account of confusion over values and consequently was more susceptible to charasmatic leadership, since 1931. Many cultural changes occurred during the period 1953 to 1975. A new class arose among Muslims. The growth of this class started with the introduction of compulsory primary education in the cities by Maharaja Hari Singh and was stimulated by the provision of free education by Bakhshi Ghulam Mohammad, liberal politics of Ghulam Mohammad Sadiq and Mr. Syed Mir Qasim, resulting in an army of job-seekers and material goals. Religious values of virtuous life were replaced by the material values of having a car, a T.V. and other comforts of life. Every Muslim graduate expected a gazetted cadre in civil services, owing to the fact that earlier ordinary educated man had been promoted to definitely very higher caders. In marriages also upstarts and bureaucrats, and both middle class and upper strata

people, desired their daughters to be married to either doctors, engineers or higher cadre civil servants leading to a competitive dowry system. In sex, more liberal attitudes were developed, and owing to institution of divorce among Muslims, domestic peace has become a rare commodity. Among Kashmiri Pandits a definitely more acute problem of dowry has been sapping the vitalities of the community. They live to earn for dowries. Their psychological phenomena that they are superior to Muslims in intellect has shattered them into their disillusionment. Consequently, the Muslims in this confusion, in particular since 1947, were vitiated by the personality cult, which shaped their personalities since 1931.

The political personality of Sheikh has the disadvantageous feature of losing in every confrontation that he initiates. One of the reasons for his emerging as a loser is his authoritarian personality. His confrontation with Mr. Mohammad Ali Jinnah lost for him the accession to Pakistan. Further his confrontation with the Maharaja lost him the independent Kashmir. Consequential upon his confrontation with Mr. Nehru before 1953 he lost the internal autonomy for Kashmir. His reconciliation with the Centre from 1947 to 1979, gained nothing for him or his nation except enhanced grants for the State. A fresh confrontation with Delhi might make him to lose something more. Had he accepted the offers from the Centre between September 1953 to ending 1960, through Abul Kalam Azad and Rafi Ahmad Kidwai, he might have gained or retained what little autonomy he had gained before August 1953. Presently, he is in accord with the leadership in Delhi, as against his confrontation in 1980.

Thus, one can aptly remark that the sociology of politics revolves round the same traditional folklore that politics is a useless trade which pays none, not even those who are in power. With all the agrarian reforms, there are still hoarders in villages who, in the absence of chakdars, act as chakdars of pre-independence style. We find the same Tehsildar with the same rod to knock at the peasantry for collection of levy in

kind. One finds the peasantry under debt in the same manner and style as it existed under Dogra rule. In urbanized areas also we find only the rich having the power and the influence and the poor being masquerading under the agonies of poor life. A Kashmiri has learnt that politics has no relevance to the society but to a few people. Consequently, he is the same type of existentialist as he happened to be before 1947. His socio-political goal, with all its confusion, is to live a life—needs of life to be fulfilled whatever way he might do so. Ordinary men fighting for survival, a bureaucracy steeped in corruption, and the middle class lost in the so-called pomp and show, has resulted in the elimination of honest and decent men in Kashmir.

Thus there is only one language of politics in Kashmir—that shows it is confusion-par excellence—it is in the folklore a *Yeeravan-naav* (Anarchy). True to tradition, Kashmiri is more found in shrines and less in mosques. The political leader exploits the same and resides in the same. Bakhshi Ghulam Mohammad, true to the Kashmiri blood, renovated the shrines of Mukhdoom Sahib, Hamadan Sahib and Dastgir Sahib.

The Sheikh has the allegiance to the Durgah at Hazratbal. He has delivered his most important and historical statements at the Durgah Sharief from time to time. The Sheikh has contributed to its rebuilding in a great architectural design as well. The politics of Kashmir thus is the politics of the shrine of the leader. It is in tradition, a cult of the shrine and cult of the leader.

True to sociological tradition of Kashmir, authoritarianism is foreign, it is not docile but is sophisticated. Tolerance and rational approach is its indigenous character and thus the soil is fertile for democracy and consequent upon this formulation the politics of peace and stability alone can flourish in it. Let us examine to what extent peace is reflected through the last three eventful decades.

CHAPTER III

Eventful Decades

The post-partition period in the Indian sub-continent witnessed in Kashmir more uncertainty than in any other princely State of India. Both the Muslim Conference and the National Conference were striving for recognition as the sole voice of the people in the middle of 1946. The National Conference, according to Bird Wood, symbolised the forces of national secular movement determined to remove the Maharaja, not in the capacity as an alien Dogra ruler, but as a feudal anarchism. The Muslim Conference, on the other hand was trying to consolidate and influence the people to remove the Maharaja for facilitating the State's accession to Pakistan on the pea of a co-religious State and economic suitability.

Lord Mountbatten visited Kashmir in June, 1947. Lord Bird Wood wrote, "He found his host (Maharaja Hari Singh) in defensive mood, unable to face up the great problems which sooner or later would inevitably present themselves. Attractive as the temptations of isolated independence were, it was clear that he would receive the worst of the two worlds. Pakistan would be plotting to remove the Hindu dynasty from continuing to rule a Mohammadan people, while the Indian Government, through Sheikh Mohammad Abdullah, would be seeking his downfall as an enemy of the neighbouring progressive democracy.

The Maharaja could not actually face the problems that confronted him in the post-partition months. Pakistan was hostile, India was suspicious, Moslems in Poonch rebelled, volunteers of the R.S.S., Akali Sikhs and the Indian National Army entered Jammu and armed men infliterated into Kashmir from Pakistan, and the free flow of goods and necessities of life stopped. The Maharaja had been under considerable pressure from the Congress and the Government of India for the removal of Pandit Ram Chand Kak, his Prime Minister, and the appointment of a person acceptable to Sheikh Mohammad Abdullah. Ram Chand Kak, Prime Minister of Kashmir was removed but a government under Janak Singh could not function and Lala Mehar Chand Mahajan was appointed as the Prime Minister, but the situation continued to deteriorate. The Maharaja had no alternative but to release Sheikh Mohammad Abdullah on 29th September, 1947, and share governance of the State with him. Though the Maharaja desired the setting up of a government of his own with the Sheikh as an associate, the events moved too swiftly for him. Bird Wood writes, "Events moved swiftly and within a month, Abdullah assumed full responsibility after release."

Before the assumption of power the Sheikh had appealed to India and Pakistan in his speech at Hazratbal, Srinagar, "Pakistan did not exist at the time of my imprisonment. Today it is a reality. Tomorrow, whatever the decision, about our future, it shall be guided and moulded under the present realities. Consequently, we hope no compulsions with regard to accession, until we get independence from our despotic rule."

Probably to further this end, which was doubted by Pakistan leadership, the Sheikh sent a team of three leaders from the National Conference to Pakistan for having a dialogue with Pakistan leadership on the future of Kashmir. These leaders included Late Bakhshi Ghulam Mohammad, Late Ghulam Mohammad Sadiq and Chowdhry Shafi. Earlier, various emisaries from Pakistan, including the Late Dr. M.D.

Taseer, spent considerable time in the Valley in a bid to sell Kashmir's accession to Pakistan to leaders and activists here. Little progress was, however, achieved. The team of National Conference leaders could not win the Pakistan leadership either on account of the awoved policies of the National Conference or on account of the lack of political foresight of the former. Most of the political literature on either side blames the onus of its failure on the other side. Immediately, after the failure of this mission, the armed volunteers from the Pakistan side started pouring into the Valley and uncertainty and anarchy reached its pitch.

This was the time when the first important issue or crisis cropped up in the politics of Kashmir. This issue was the outcome of the partition of India and the future of princely States. Should Kashmir accede to India or to Pakistan was a matter of concern for both the Maharaja of Kashmir and more so to the leadership, which by and large had gone to the Sheikh's National Conference ? True that the Sheikh appealed to both the dominions to wait their decision about accession, yet the pressures desired immediate action. Consequently there was enough of political activity in Delhi and in Karachi. Pakistan decided to import into Kashmir the armed rebellion and India to bring Kashmir on its side through political persuasion. Earlier in Summer Lord Mountbatten and Mahatma Gandhi visited Kashmir and talked to the Maharaja of Kashmir. He was undecisive and finally domestic compulsions for the Maharaja made him to write to the first Governor-General of India that he wanted to take time to decide to which dominion he should accede. During this time he approached the two dominions to enter into a standstill agreement. According to his letter to the Governor-General he conveyed that Pakistan Government accepted his offer of standstill agreement but the Government of India desired further dlscussions on this score. The Maharaja, however, pleased that there was strangulation of supplies like food, salt, petrol and an armed rebellion from Pakistan compelled him to request the Government of India to send arms to protect

life and property of his subjects. This letter dated October 26, 1947, was the first request of the Maharaja to the Indian Government for accession of Jammu and Kashmir to India, accompanied with the instrument of accession. The Government of India accepted the instrument of accession. Consequently, a proclamation was issued by the Head of the Jammu and Kashmir State on 5th March, 1948, in regard to the convening of a National Assembly as contained in clauses 4 to 6 of the State Proclamation.

Thus the issue of accession having been finalized, the Indian army reached the Valley for rescue operations, and the infiitrators were driven out. The accession was termed to be conditional. According to V.P. Menon, it was declared temporary though the Sheikh wanted India to make it absolute. The Maharaja acceded to India, surrendering only three subjects to the Central Government, namely defence, foreign affairs and communication. On the finalization of the accession, in November 1947 the Sheikh was appointed as the Chief Emergency Administrator and later in January 1948 he was appointed as the Prime Minister of the Jammu and Kashmir State. Untill the Sheikh's assumption of the office of the Prime Minister Mehar Chand Mahajan continued to be the Prime Minister of the State.

Military operations in Jammu and Kashmir from October 1947 to the ceasefire at the end of 1948 are revealing in itself. The operations have had a long hand-over affecting peace in the Indian sub-continent for the past three decades. During the period the State witnessed two short but sharp military conflicts in 1965 and 1971. The military operations, or as some would call it rescue operations, though confined to the Jammu and Kashmir, immediately caused polarisation in international politics. The issue came up before the Security Council of the U.N.O. in January 1948. The United States and her allies exerted considerable pressure on India, through the U.N. and otherwise, to withdraw her troops from the State to facilitate the holding of a plebiscite on the issue of accession. It is no secret that at one stage India almost

succombed to the pressure. But in the summer of 1950 hostilities broke in Korea and U.S. found itself involved in the crisis. Tensions and pressures changed their pattern and India experienced relief. As many as 140 meetings were devoted to the consideration of Kashmir issue and 16 resolutions passed on the issue in the United Nations. In the beginning the United States of America played a role favourable to Pakistan but soon after Soviet Russia joined on the side of India.

Many commissions were appointed, many resolutions passed, Pakistan favoured by the United States of America and her allies, whereas Russians favoured India by vetoing various U.N. resolutions. In this context Sheikh Mohammad Abdullah's statement is worth quoting, "Today the lot of our country is being discussed in conferences of the U.N., we appealed to the U.N. in good faith so that the aggressor is condemned. Instead the U.N. decided to appoint a mediator—we cannot permit Munich to be repeated in Kashmir. We believe mediation is to bring the aggressor and the aggressed at par and it means our free will is ignored." The United Nations Organisation could not get its resolutions operated, it could not do so as the charter requires the consent of both the parties, necessary for the operation of its decisions. Consequently, sometimes Pakistan refused to operate the decisions and sometimes India did not cooperate. It, therefore, resulted as expected in the failure of Commissions like McNaughton, Dixon and Graham. The position, however, deteriorated further, on the grant of U.S. military aid to Pakistan. The military alignment of Pakistan with the West was a signal for India to withdraw her commitment to Plebiscite under U.N. auspices. During this period and even uptill now, Pakistan continues to raise the issue at international forums to seek fulfilment of plebiscite for the people of Kashmir. India, however, was successful in dwarfing the issue by reducing its settlement to bilateralism and eliminating the method of war under the Simla Agreement.

One of the factors in the chequered constitutional history

of Jammu and Kashmir came to the forefront immediately after the accession. The relationship between India and Kashmir was, in the beginning, determined by the instrument of accession and later by the Article 370 of the Indian Constitution. The Article as enshrined in the Constitution was later itself interpreted by the vested interests in their own way. When differences started emanating from it, the Nehru-Abdullah agreement made on July 24, 1952, was motivated to bridge it up and interpret the existing relations. Even this agreement could not solve all the problems. For the National Conference in itself had split inside giving rise to acute factionalism in it. In Delhi a lobby had been created against the Sheikh—Kashmiri Pandits usually included in it till this day. Actually Sardar Patel, right from the beginning had not accepted Kashmir's special status within the Indian constitutional framework. In the beginning the differences between the Sheikh Government and Government of India, in particular the Ministry of Home Affairs, was one of minor administrative problems, but later developed into major constitutional anamolies and respective political outlooks with regard to the State. B.N. Malik, in his book, "My Years with Nehru" talks about the recall of two intelligence officers who were later removed but had created ill-will between the Ministry of Home Affairs Government of India and the Prime Minister of Jammu and Kashmir (those days Kashmir had Prime Minister instead of Chief Minister). The constituent Assembly of India could not think of unforeseen issues that might arise, while considering the grant of special status to the State of Jammu and Kashmir. Complications arose as soon as the Article 370 was made operative, Dr. Mohan Krishan Teng calls it the Doctrine of Double Charge. The State Constituent Assembly had to determine the areas of autonomy and relationships with India within the ambit of Article 370. Surly, it led to the creation of doubts amongst Delhi and State leadership. The Sheikh was vocal on the platform and the Centre, especially Mr. Nehru persuading. While Yuvraj Karan Singh by a proclamation on 20th April 1951, as required under Article 370, convened the Constituent

Assembly, the Sheikh talked about the alternatives before the Constituent Assembly with regard to the settlement of the Kashmir dispute. The Sheikh said, "The Cabinet Mission Plan has provided for these courses which may be followed by the Indian States when determining their future affiliations. The State can either accede to India or to Pakistan, but failing to do either, it still can claim the right to remain independent —these three alternatives are naturally open to our State."

This address in its entirely was not considered proper by the Central leadership ; instead it visualized a constitutional deadlock. Consequently, it resulted in the Nehru-Abdullah agreement made on 24th July 1952. This agreement explained the constitutional relationship between the Centre and the State. It held that common citizenship was accepted to both with special privilege for State-subjects. The head of the State could be appointed and recognized on the recommendations of the State Legislature. Both the flags (i.e. National and State) could be hoisted together. The President of India was to retain the powers of reprieve and commute death sentences and he could exercise his emergency powers under Article 352 of the Indian Constitution in case of external threat and internal disturbance. However, the application of fundamental rights as defined in the Indian Constitution was applicable to the citizens of Jammu and Kashmir subject to certain modifications. The Supreme Court of India was to retain its original jurisdiction in respect of disputes mentioned in Article 131, thus making it a court of appeal in all criminal and civil matters. The financial jurisdiction could not be determined and it was postulated to be worked out in future. Consequently, the Sheikh explaining the Delhi agreement before the Constituent Assembly said, "Here I would like to point out that the fact that Article 370 has been mentioned as a temporary provision in the Constitution does not mean that it is capable of being abrogated, modified and replaced unilaterally. The actual effect, the temporary nature of this Article has is the power to finalize the constitutional relationship between the State and the Union of India and it has been specifically

vested in the Jammu and Kashmir Constituent Assembly." Even this agreement did not resolve the differences between the Centre and the State leadership.

Consequential upon it Dr. Karan Singh became the first elected head of the State on 17th November, 1952, and was designated as the Sadar-i-Riyasat. The Assembly appointed two committees : one was to determine the relationship between the Centre and the State and the other was to draft the Constitution for the State. The Committees were also to determine the fundamental rights, matters pertaining to citizenship and the future of the State flag. The basic principles committee was headed by Mirza Mohammad Afzal Beg. With the task of framing the Constitution and determining the relationship also began factionalism in the National Conference. Some members were strongly in favour of full integration with the Union of India, some opposed it and some more had no clear understanding of the situation.

The situation further deteriorated by the end of 1952 and the beginning of 1953 on account of the Praja Parishad Movement in Jammu. The Sheikh treated it as a conspiracy directed against him. The slogan of the agitation was, "One legislature, one Prime Minister and only one flag." Consequently, they demanded the abrogation of Article 370 and treating of Kashmir as good as any other State in India. The movement strived to create a vedge between the people of Kashmir and Jammu with the apprehension that the Muslim majority of the Valley would terrorize the Hindu minority of Jammu. The Indian Jana Sangh abetted the movement. The late Shama Prashad Mukerjee, voluntarily ignoring the legal implications, entered the State in sympathy for the movement was arrested and after a month he died on 23rd of June 1953 while in detention at Chashma Shahi in the Valley.

During this period one of the radical changes occurred at the domestic front in the State of Jammu and Kashmir. It was in dealing with the agrarian reforms. It was during the second session of the Assembly, on 27th March 1952, that the report on Land Commission was submitted to the Assembly.

The Committee expressed itself against the payment of any compensation. While reporting the recommendations of the Committee the revenue minister said that no compensation was to be paid in spite of the specific provisions in the Indian Constitution in this regard because that part of the Constitution of India was not at all applicable to the State of Jammu and Kashmir. Thus Chakdari was abolished and land went to the tiller. Consequently, the elite of the Maharaja went against the Sheikh and joined the opposite camp of the ruling elite.

During the periods 1951, 1952 and beginning 1953 informal forces opposing the Sheikh both in Delhi and Srinagar, started strongly lobbying against him. When it reached its climax Maulana Abul Kalam Azad and Rafi Ahmad Kidwai contacted the Sheikh and wrote him letters of persuasion, but all attempts failed to persuade the Sheikh. The intelligence officers from Delhi arrived in Srinagar to persuade the Sheikh from aggravating the situation and pacify the Praja Parishad movement, but none could bridge the differences.

The Praja Parishad movement subsided but the Sheikh, as some believe, could not be brought round on constitutional relationships between the Centre and the State. The stagnation in the relationship developed on account of the fact that the caucus of the National Conference was interested in more autonomy, the Praja Parishad demanded full integration and many others tried to create cleavage between the Centre and the State for furthering their ends.

By the beginning of 1953, a dissident group separated from the National Conference under the leadership of Mr. Mohiuddin Kara. He founded a party known as the Political Conference and his first statement demanded India to withdraw her troops from Kashmir and refer the issue of accession to the people. After their declations on 27th of January 1953, the leaders of this party were arrested. The period of this constitutional tension had made the Sheikh to feeluneasy. The apprehensions were that Muslims were not given proper repre-

sentation in Central Government departments. On the 24th of July, 1953, while addressing the National Conference workers, the Sheikh enquired of the Government of India, "How many Muslims were working in administrative command and operational command forces at the time of our accession and what is their position after six years of our accession to India?". He also questioned as to how many Muslims were recruited in the Post and Telegraph Department. The Sheikh said before the workers, "We ask for justifications, we fought Pakistan so that our rights are safe in India, and if the safeguards are deliberately removed then our relationship with India will loosen itself. I still believe that we cannot go to Pakistan on the basis of her might and she cannot make us slave by invading us, we have preferred India to the other dominion on the basis of our commitment." The Sheikh continued with the assumption that the relationship between India and Kashmir would be determined on the basis of bilateral agreements and on the basis of mutual understanding. It may be said that owing to administrative laxity, many lapses of omission and commission, opposition of former big landlords/land-holders and factionalism in the National Conference, the Sheikh's charisma had eroded to a considerable extent. His pronouncements calling in question the attitudes in Delhi attracted to him some disendents. Having chrisma he could not be deterred from the public pronouncements and interpretations of his dialogues with Delhi. Whether he was conscious that better understanding with Delhi could be reached by his public pronouncements is still questionable. Equally is questionable the attitude of Delhi which had a second source of information, rather a direct liaison with the Kashmir leadership. Looking at Delhi Srinagar discord dispassionately, one would not overlook the role played by Indian bureaucracy in bringing down the Sheikh's regime in 1953. Later events show that neither the Centre nor the Sheikh harvested anything out of the events of 1953. However, the psychological warfare between Delhi and Srinagar ultimately resulted in the downfall of the Sheikh on the 9th of August 1953. Shri Sham Lal Saraf an important member of the Shiekh's Cabinent having a conflict

with the Sheikh and having his own sympathisers to help him met the Sadar-i-Riyasat and before the Sheikh could oust Saraf, he was dismissed and arrested on the morning of 9th August 1953. B.N. Malik explains how he contacted Shri Mehra, I.G.P. Jammu and Kashmir and confirmed the arrest of the Sheikh. The Sadar-i-Riyasat, had acted under the instructions of the Government of India. The D.I.G. Police, L.D. Thakur along with a party had gone to Tangmarg, arresting the Sheikh forthwith. The arrest had a strong reaction in the State. Demonstrations were held in Srinagar and other parts of the State. The police had to resort to firing and as usual the Government version of deaths differed from the total number given by other sources. This, however, resulted in the instalation of the leader of the majority in the Cabinet, the late Bakhshi Ghulam Mohammad as Prime Minister of the State of Jammu and Kashmir. Later in October the Constituent Assembly was convened but by the time most of the members of the Assembly had shifted their allegiance in favour of the new leader. It is believed that some members were coerced to show allegiance to the new leader and some were promised and paid rewards. Consequently, the members who did not scumb to pressure, either before or after their arrest, whatever sort, were immediately arrested or released. Amongst them were those of the members who desired to present a memorandum questioning the validity of the order of the arrest of the Sheikh, issued by the Sadar-i-Riyasat. This ended the first phase of the Sheikh's administration which is fertile, in its psycho-political reminences.

Immediately after the fall of the Sheikh's Ministry the Government of Jammu and Kashmir started functioning under the Delhi styled leadership of Late Bakhshi Ghulam Mohammad. Bakhshi Ghulam Mohammad as a lieutenant of the Sheikh had started as a political worker in the movement for independence and rose to be a close lieutenant of the Sheikh and the Deputy Prime Minister. He had mastered political manneuvuer-ability and administrative acumen. He understood the psychological problems of a Kashmir and

solved them on account of his adjustibility with all the classes of Kashmir society. Sociologically he was a Kashmiri in blood and mind and behaved as such. Consequently, after the assumption of power he not only won over the many members of the legislature but was also successful in bringing peace to the Valley and creating the atmosphere conducive for a stable government.

His task as the new Prime Minister was tremendous and he forthwith had to face the situation on many fronts. With regard to the Sheikh's political stature he harped on the propaganda that the Sheikh was an enemy agent and that he was bent on undoing the accession. On the economic front he abolished the system of levy in kind and supplied rations in Srinagar on subsidized rates. One trakh (six seers) of rice was sold for one rupee whereas earlier under the advice of the Sheikh's Ministry for Food it was sold for seven rupees. When people had approached the Sheikh for cheaper rice he had advised them to eat potatoes, beans and pulses rather than incur any obligation from India by eating cheaper (subsidized) rice. Bakhshi Ghulam Mohammad declared education to be free upto the University standard and he abolished the system of co-education, upto the 8th grade in primary and central schools. The levy in kind, known as *Mujawaza*, recoverable from the tenants and Zamindars, was declared to be freewills collection on increased rates. The Central Government advanced more aid to the State Government for construction of roads and buildings and for the purpose of improving the economic standards of the people. The Government was provided assistance for hydroelectric projects, etc. Consequently, Bakhshi undid what the Sheikh did in politics but in economic front he went ahead in improving the economic lot of all sections of the people. He started an era of economic uplift. Bakhshi had the knack and administrative capability to see that funds and other assistances were utilized on various shcemes without red-tape. With many virtues on his credit side, Bakhshi Ghulam Mohammad had many wrongs on his debt side. He had

inherited from the Sheikh's government the methods of harrasment to his political opponents on the excuse of declaring them Pakistani agents. Encouraging a policeman, the most notorious of his time, the late Ghulam Qadir Ganderbali, he secured for him the most conspicuous position. The surprising event of Ganderbali's notoriety was the award to him of a Police Medal by President of India. The workers of his National Conference, from the Secretary of the organization down to the ordinary worker in a Mohalla or village, got a bad name for him. Most of his workers, in laison with the bureaucracy and the administration, used corruption practices and exploited their position for their interests. Bakhshi's dynasty, exploiting the official position to their benefits, reached the highest position of commercial class. Consequently it turned into a big business class, forming an intermediary of the Indian bourgeoisie for exploiting the common man in Kashmir. In this context, Joseph Korbel declaring his brethren as B.B.C. (Bakhshi Brothers Corporation) is true to its spirit. However, commenting on the charge against Bakhshi clan of amassing wealth on account of their influence in politics, a national daily observed that the relations of the Prime Minister of the U.K. are not begging on the steps of No. 10 Downing Street. That could be applied *mutatis mutandis*, to Prime Minister's families elsewhere, Kashmir not excluded. In the beginning Bakhshi was a dependable agent of the Centre, but later lost the confidence and was a Kamrajed. Assuredly, during the last days of Bakhshi's regime, Mr. Ghulam Mohammad Sadiq and Mr. D.P. Dhar were presented as the leaders and trusted lieutenants by the Centre. Bakshi, however, had the knack to perpetuate his rule by over ten years on accout of his influence in Indian bureaucracy, Indian bourgeoisie, political executive and army top brass.

Assumption and retention of power, by Bakhshi, did not however, keep Delhi in good humour. Having a guilty conscience, Nehru in particular was anxious to settle issues with the Sheikh. To the disadvantage of Nehru and the

Congress, the Sheikh had achieved an international personality by then. Accordingly, the Government of India initiated a dialogue with the Government of Pakistan. To this effect Mr. Nehru and Ali Mohammad Bogra, the Prime Minister of Pakistan had a meeting in Delhi to have a second thought over the Kashmir issue. Both the leaders in their joint come munique declared the intention of holding regional plebescit-in Kashmir during which Admiral Nimtiz was to act as administrator of the State. This dream, however, was never realized. During the period 1954, Pakistan entered into a military alliance with the United States of America. She also became a member of CENTO and SEATO. This was considered by the Indian Government as an unfriendly act. The apprehensions of the Government of India went as genuine as the apprehensions of Pakistan about Indo-Soviet Treaty in 1971. The consideration of Government of India that absence of Kashmiris with regard to the dispute is basic and it be treated a dispute between two dominions, was thus shattered by Pakistan's entry into military alliance. By 1955 Russians had fully favoured India on Kashmir and consequently, during the visit of M/s Belganin and Khrushiev to the Kashmir Valley, the Russian leaders reiterated Kashmir to be an integral part of India. Most of the resolutions before and after 1955 were vetoed in the Security Council of the U.N.O. by the Russians.

After two years of imprisonment Mr. Mohammad Afzal Beg was released on parol on account of bad health. He went to Delhi on the plea of a medical check up. He had some contacts with various leader in Delhi and on his return he founded the Plebiscite Front on 9th August 1955. During 1956 he was re-arrested and detained.

During the detention of the Sheikh and Mr. Beg, Mr. Nehru and Bakhshi Ghulam Mohammad had usually dialogues on their future. Nehru felt, as a democrat, that these leaders must either be sued under law or must be released. Consequently, after a long term of five years, the Sheikh was released on 8th January, 1958. On his arrival via Banihal National Highway he was given a rousing reception. He addressed throngs of people on the way to Srinagar, where he addressed

a mamoth gathering at Hazuribagh. In his address, the Sheikh reiterated his earlier statement of 1953 that Kashmiris had still to determine their future. On 17th January, 1958, the Sheikh called a public meeting at Pathermasjid Srinagar. On the apprehension of Sheikh's desire to recover Mujahid Manzil, the government demonstrated a show of force, which resulted in the change of the venue to another place. Bakhshi visualized the effect of Sheikh's comeback and consequently the latter was re-arrested on 19th May 1958. The Sheikh was sued and a case charging him of conspiracy was filed against him under Ranbir Penal Code Article 121A and 120B. The following were the allegations levelled against him by the prosecution :—

1. The Sheikh was to capture a legally Constitutional government by force and violence.
2. He attempted to create communalism and hatred against India.
3. A war counsel had been initiated by him to struggle against India and hatred was created against India.
4. A liaison was created with the governments of Pakistan and Pakistan-occupied Kashmir.
5. The Sheikh's wife received money from the government of Pakistan.

Many people involved acted as intermediaries, like Peer M. Gilani and some intelligence officers from Pakistan. In the beginning the Sheikh was not included in the list but later he was the Chief accused. Mr. Beg as an advocate pleaded the case, cross examined the witnesses and tried to prove that he was not guilty. The case was finalized in 1962 by a special magistrate's court and later it was referred to the Sessions Court. Finally, Nehru intervened and he instructed the Government of Jammu and Kashmir to withdraw the case against the Sheikh. Nehru had earlier been influenced by Mr. Jayaprakash Narayan and Miss Maurdula Sarabahi to this effect. In addition, many members of the Parliament and intellectuals were firmly trying for the release of the

Sheikh. The concern of these people was genuine as they felt that the Sheikh's detention jeopardizing the prestige and honour of India. Nehru personally believed that a political case could not be settled through legal intricacies.

All along the period of the Sheikh's detention, a vedge was created between the people of Kashmir and Delhi. The elections in Kashmir had to be rigged, the people did not participate in political activities, and the ruler and the ruled were rendered apart. The economic conditions of the people which in Bakhshi's earlier years had improved were deteriorating—favouritism had created a class of upstarts. The General Secretary of the National Conference and his workers had let terror loose in the Valley. It resulted into factionalism in the National Conference. Its socialist group headed by Mr. Sadiq had to separate from the government. Frustration amongst the people, especially the intellectuals, and other sincere elements had pushed the business of the government into doldrums. M/s Sadiq, D. P. Dhar and others tried to change the political atmosphere, yet could not succeed. However, for the failure of economy, Bakhshi Ghulam Mohammad could not be solely held responsible. His task was to appease and gag the mouths of the people so that no Pakistan slogans could be raised. He had not to think of plans which could be productive. Economy was a subsidary objective for Bakhshi's regime—he confronted the Sheikh and his party inside the jail and Sheikh's friends outside the government and in Delhi and Srinagar he found Mr. Sadiq and D. P. Dhar as opponents to his policy.

During Bakhshi's tenure of office for ten years there were no fair elections. Even earlier also when the Sheikh was in power there had been no fair election, and no fair recruitment either to the bureaucracy or to the civil services. Necessarily, therefore, in his constituency every member of the legislature had a peculiar corrupt leadership, and every bureaucrat was corrupt. An upstart (moneyed) class, infused with a tendency towards competition in social position resulted into commercial and business people trying to exploit as much as it could

be possible for them. On such and other varied grounds Mr. Sadiq resigned his ministership, founded a new party called the Democratic National Conference. The party's programme and political goals are examined in the next chapter but it need be said that the party started functioning as a deterrant to the role of the BBC. A dramatic change occurred when Bakhshi was 'Kamrajed' under the All India Congress Working Committee plan. In a bid to rejuvenate the Congress party many of the Chief Ministers of States resigned to serve the party, as they had been in power in their respective States for a long time. Though the Central leaders had Sodiq in mind as the successor to Bakhshi, yet the latter had the manouvrability to get Mr. Shamasuddin elected as the leader of the State legislature party.

Shamasuddin, however, remained in office for 74 days when it became known in Srinagar that the sacred relic of Prophet Mohammad (peace be upon him) was removed from the Hazratbal shrine. The theft of the relic led to a public upsurge, convulsing the entire Muslims of the State. A scene of public unity, solidarity and oneness was witnessed and all people were moved with emotions and tears. The protest continued for more than 17 days. An Action Committee, consisting of all sections of the people formed under the chairmanship of Maulana Moulvi Mohammad Farooq, was at the time absolutely a raw political stuff. The main spokesman of the Action Committee was Maulana Masoodi whose eloquence and rehoteric was suited to channelize the sentiments of the ignorant masses of Kashmir. All along the period of protest, the Maulana providing all opportunities for the political catharsis of the Kashmiris, was successful in serving the interests of the Government of India very well. The Maulana, whatever, his motives in securing the leadership during the agitation, remains a most introvert political personality, shrouded in his own mask of political mechanics.

The result of the protest and the agitation showed, beyond doubt, that the Shamasuddin administration could in no way control or maintain what may be called "peace and order".

The administration had crumbled-down. Even the Central Government was helpless but they proved to be wise being over-cautious. They pacified the situation, arranged the comeback of the normalcy through their favourite Maulana Masoodi. Communal harmony was maintained and no provocation through police was given. Statements from Central Government and leadership revealed accord on two principles. Firstly, to condemn the theft and to punish the criminals. The three important persons of the Central Government, who played a vital role in the recovery of the sacred relic as personal envoys of Shri Nehru, were Shri Lal Bahadur Shastri then Minister without portfolio, Shri Swaminathan, Home Secretary, and Shri B. N. Mullick Director I.B. After the theft of the sacred relic, many theories regarding it were afloat. There could be only three parties who could commit such a hienous deed for political purposes. Firstly, the Government of India and Pakistan and third the political parties of Kashmir. The law of elimination would reveal that neither Government of India nor Government of Pakistan could go so far, for fear of getting exposed on either side. B. N. Mullick, however, puts the blame on Pakistan as he writes, "From the investigation which we had so far conducted, the interrogations of the large number of people whom we had listed in the conspiracy as well as from the examination of a large number of top people in Kashmir of all political shades, it was clear that Pakistan through Pir Maqbool Gilani with the assistance of some of his important contacts in Kashmir, who had received money for this purpose from Pakistan, had arranged the removal of the Moe-Muqaddas". If B. N. Mullick's assertions were correct, there was no need to hide the facts. Consequently, the hienous deed was committed by one of the local parties. It has remained a mystry so as to which local party or parties abetten the theft. The mystry is a discredit to the Government of India.

The sacred relic episode, who-so-ever be responsible for its theft, resulted in a rethinking on Kashmir both in Delhi and in Kashmir. Mr. Sadiq and his progressive clique (Read author's book *Socialist Ideas and Movements in Kashmir*)

who in the post-1947 had almost all become opportunists, were in a better chance of achieving power. Earlier the democratic National Conference leadership, under the so-called pursuasion and mediation of Central Government had rejoined the National Conference headed by Mr. Shamasuddin. Consequently, the only choice for the Central Government, after the resignation of Shamasuddin on account of his failure of maintaining law and order, was Mr. Sadiq and his coterie. Mr. Sadiq was elected in the presence of Shri Lal Bahadur Shastri as the leader of the Legislature Party.

Then in April 1964, after the sacred relic episode, came Sheikh Mohammad Abdullah's release. In May of that year Sheikh visited Pakistan as sponsored by Nehru, probably with a view of a dialogue with the Ayub regime on Kashmir. The Sheikh did not only hold talks with the President Ayub but subsequently visited Pakistan-occupied Kashmir. He met with Kashmiris living in those areas and discussed the Kashmir problem with them but before he could evolve any solution to the problem, his visit was cut short by the sudden death of Pandit Nehru in 1964.

Soon thereafter Bakhshi Ghulam Mohammad presented before the Legislative Assembly of the State, a vote of no-confidence against Sadiq Ministry but before it could dislodge him, Sadiq got the Assembly adjourned. It resulted in the extension of Article 356 of the Indian Constitution to the Jammu and Kashmir State, enabling Sadiq to convert the National Conference into the Congress, making it a part of the All India National Congress. The Sheikh, at this juncture, gave a call for social boycott against the Congressites in Srinagar and elsewhere. It created minor tensons in the Valley as, for instance, when a priest refused to perform funeral service on the plea that the deceased belonged to the Congress party. During Mr. Sadiq's regime, two more events occurred, confusing Kashmir politics. First, the Sheikh's unexpected and conspicious meeting with the Prime Minister of Red China Mr. Chou-en-Lie and Zulfiqar Ali Bhutto in

Algiers, while the former was on his way back to Kashmir from Haj pilgrimage. The other was the Sheikh's arrest in Delhi by the Central Government on his return. It was the first time for the Centre to take initiative itself, instead of the State Government, to arrest the Sheikh and consequently he was behind bars in Uttakamund. Later in August 1965, infilteration from Pakistan started in the Valley and also in areas of Jammu adjacent to Pakistan, resulting into an esclation of conflict over Kashmir on September 6 of the same year.

Later in 1967 an individual act by a Kashmiri Pandit girl marrying a Muslim gentleman escalated into a minority upheaval in Srinagar. The Pandit minority, taking an excuse of the event, launched a movement. The girl, her parents said, was a minor and had been kidnapped. They pleaded that she be restored to them or entrusted for custody to neutral hands. Since her custody was given to the Muslim (under pressure, the Pandits said) who claimed to have married (unlawfully, the Pandits said) her, there was a protest and an uproar. The agitation on this specific issue lost control and all sorts of people pressed other demands, for instance, for greater share in public services, admissions on merit to technical and professional colleges. The agitation continued for seventeen days. Mr. Sadiq as Chief Minister was not moved and instead of showing any relaxation, his government issued a press note clearly explaining the position of the minority, over the shoulders of the majority in almost all government offices. Assurdly, the statement could not subside the agitation. Consequently, Sadiq along with his minority Lieutenant, maneuvoured the defeat of the agitation by rushing the mojority into a counter offensive. Mr. Sadiq had a capacity to revitalize during his time, its National Conference but till the end of 1964 as Sisir Gupta accepts there were persistent symptoms of disunity that had convulged the Conference.

Sadiq was a liberal, democrat and socialist but as the leader of the National Conference, he could not maintain unity as his contestant was Mr. Bakhshi. When the cleavage developed

between the two groups of the National Conference, Mr. Shastri, Central Government Minister tried to bring a reconciliation amongst them. Bakhshi could not, however, forgive Sadiq, as the latter had put the former under internment immediately after the sacred relic theft. Sadiq, however, released the Sheikh during his tenure of office, resulting into the Sheikh's visit to Pakistan along with his team and the holding of the "State Peoples Convention" in Srinagar. The Convention, in its deliberations, discussed many alternatives as the solutions to the Kashmir tangle. There were as many as fifty-one suggestions presented to the convention. Eighteen of them favoured Kashmiris accession to India, sixteen desired it to be declared as independent, six suggested Kashmir's placement under U. N, supervision and eleven desired its accession to Pakistan. Though the Convention did not declare the failure of arriving at any decision, yet, as Sona-Ullah Bhat asserts, no tangible results could be arrived at. In 1968, the Steering Committee on this Convention met in Srinagar hardly for two hours when it dispersed. Delhi and Pindi were not interested in holding this Convention and consequently it had neither any legal nor any political sanctity. Even if it had arrived at any solution who would have enforced it. Assurdly, it was a political catharsis.

Sadiq, however, tried to seek a political integration between the people of the State and the National Political parties. Consequently, he converted the old National Conference, persisting from 1939, into a part and parcel of the Indian National Congress. By this act Sadiq won the hearts of the National leaders on the one hand and on the other hand buried the organization of the National Conference which had brought bad name to its leaders.

From May 1965 to January 1968, Sheikh Mohammad Abdullah remained under detention. Bakhshi Ghulam Mohammad renewed the National Conference under his own leadership after the emergence of the Congress branch, deciding as the opposition to contest the elections to the State Assembly. The Sadiq administration, following the legacy of

the Bakhshi administration, employed the same tactics in elections. Most of the nominations of the National Conference were rejected and elections rigged, permitting, however, Bakhshi to get elected from two seats of Safakadal constituency for State Assembly, and Srinagar Parliamentary Constituency. He later opted to be the member of the Parliament of India. Sadiq regarded Bakhshi as a threat to his power and popularity and consequently to eliminate his come back, instituted an enquiry commission khown as Ayanger Commission, which, at the end of investigations, declared that Bakhshi had misued his position and held him responsible for an embezzlement of four crores of rupees.

During the period from Indo-Pak conflict of 1965 to the release of the Sheikh, the Government of India started the erosion of Article 370, of the Indian Constitution. The process of constitutional integration of the State started immediately after the war. The jurisdiction of the President over the State under Article 352 had already been extended and the jurisdiction of the Supreme Court to the State of Jammu and Kashmir was subsequently extended. The State Constitution was amended under the sixth Amendment Act to change the nomenclature of the Sadar-i-Riyasat into Governor. The Prime Minister's position also underwent a change in nomenclature into the Chief Minister. Many more orders were issued whereby civil servants under the Indian Administrative Services were adjustable and transferable between the Central and State Governments. These constitutional changes went off unnoticed in Kashmir. By the beginning of 1971 the elections to the Indian Parliament were scheduled to be held. The Sheikh and his party decided to contest elections and as a consequence, Sheikh Mohammad Abdullah and Mr. Afzal Beg were banned to enter the State. Later, the Plebiscite Front was declared unlawful party.

In August 1969, the Sadiq Government decided to conduct Panchayat elections. Its operation showed that the Sheikh's charisma had still not broken. Though elections were supposed to be rigged, yet the Plebiscite Front Chief Mirza Afzal Beg

declared that the party would contest future elections. The National Conference, led by Bakhshi Ghulam Mohammad, the Pradesh Congress led by Ghulam Mohammad Sadiq and the Central Government were apprehensive of the new forces in the Valley, who had mass appeal. In 1971, the parliamentary elections were scheduled to be conducted. The Plebiscite Front decided to contest elections and before nominating its members for contesting various constituencies, Sheikh Mohammad Abdullah left for Delhi. While theSheikh was to return to Srinagar by an airliner, he was served a notice not to enter the State. Mr. Beg was served a similar notice while travelling by road. Later, the Plebiscite Front workers were arrested and Plebiscite Front was declared as an illegal political party. By that time Sadiq fell seriously ill and passed away, and Mr. Syed Mir Qasim succeeded him as the Chief Minister of the State, India and Pakistan were just then at war over Bangladesh.

The year 1971 witnessed rapid developments. A plane was hijecked from Srinagar to Lahore in the month of January 1971, resulting in delinking air communication between East and West Pakistan. The revolution in the Eastern Wing of Pakistan, was nearing a climax. The Eastern Wing of Pakistan, later secured independence and a new State emerged on the map of the world known as Bangladesh. Pakistan was not only cut to size but it was humiliated as well as by her army surrender at Dacca. Just before war, India entered into a peace and friendship treaty with U.S.S.R. These events had a psychological bearing on the people of Kashmir, especially the broad base of the power structure. The leadership of erstwhile Plebiscite Front started rethinking on political issues. Consequently, a meeting was held beetween the Sheikh and Mrs. Indira Gandhi. These deliberations were later pursued by Mr. Parthasarthy and Mr. Mohammad Afzal Beg as the representatives of Mrs. Indira Gandhi and Sheikh Mohammad Abdullah respectively. The various meetings and discussions resulted into the well-known 'Accord' on 25th February, 1975.

The accord in essence visualizes nothing. It simply confirms the Article 370 of the Indian Constitution and declared tha t

it shall continue to determine the relations between the Centre and the State of Jammu and Kashmir. A non-State subject cannot purchase immovable property in the State though confirmed, yet leaves it to the Government decision to secure the purpose through lease. Some people still believe that the apprehesions of the people of the State have come true, at least with regard to the commitments of the Government of India. Without examining the merits and demerits of the Accord it is genuinely believed by some that the Sheikh has lost more than what he could gain in 1953 if he had sought adjustment with the Government of India at the time. Still others have apprehensions that the retention of Article 370 hinders the economic, social and political development of the State. The recent agitation in Assam has proved that the inclusion of Article 370 was not only justified but also an act of wisdom of the leaders. The people of Kashmir feel like other peripherial Indian territories, that they are a neglected area. The psychology of neglect is so pronounced today that even the availability of talent, intelligence and efficiency has not been able to hold higher position in the administration. The University and other higher posts are held by outsiders.

After the death of Ghulam Mohammad Sadiq, Syed Mir Qasim succeeded as the Chief Minister of the State of Jammu and Kashmir. Mr. Qasim's regime uptill he stepped down and paved way for the Sheikh, is not significant in any administrative or political aspect of the State's life. However, his highest contribution is the Sheikh's 'Accord' with Mrs. Indira Gandhi and his safe withdrawal from power. Apart from this political settlement Syed Mir Qasim's administration was ineffective and he tried to continue on the footprints of Sadiq. His regime had inherited from Sadiq a deterioration in law and order especially in colleges. The students used unfair means in examinations. Sadiq's time witnessed undo interference in educational institutions, which Bakhshi never allowed.

The natural consequence of the 'Accord' was the installation of the Sheikh as the Chief Minister of the State with the Congress majority in the State Assembly. Owing to the

emergency during 1975 in the whole of India under President's proclamation, no elections to the State Assembly could be held. Though the Sheikh and Mr. Beg were elected to the State Legislature from the Constituencies of Ganderbal and Devsar respectively, yet their position in legislature was tricky. Soon after the Accord, the Plebiscite Front was converted into the National Conference, ending a long era of struggle for the right of self-determination for the people of Kashmir. During the period 1955-1975, many people were martyred, many tortured in jails, and many more terrorized under the police and intelligence interrogations. During the period youth had to undergo all types of brain-washing and corruption. The process of corruption of the mind started in Kashmir as early as 1954 and continues.

The Sheikh's power, however, was challenged in the legislature after a few months of his assumption of office. Though the Centre (Congress being in power) demanded ostansibly, as the National Conference believed it, an allegiance to the Sheikh, yet they withdrew their support to him. Their plea was that they should be granted representation in the Cabinet and the Sheikh denied it. Before the no-confidence motion could be tabled in the legislature, the Chief Minister, Sheikh Mohammad Abdullah, recommended the dissolution of the legislature to the Governor of the State. Consequently, the legislature was dissolved under Section 53(2b) of the Constitution of Jammu and Kashmir on 25th March, 1977. The elections to the State Lagislative Assembly were held in the first week of July 1977 and the National Conference secured 47 seates out of total membership of 76 of the Legislative Assembly, except two seats of Ladakh, where elections were held later, the Janata Party secured 13+4 and the Congress secured ten seats. This was the first democratic and fair election after 1947 in the State.

As a matter of fact the Sheikh, while in power from 1975-77, continued to harp the argument that owing to genuinely non-representative legislature, the improvement in administration and politics of the State was not attainable. Consequently, he

could not take any drastic steps, yet it goes to his credit that immediately after his assuption of power in 1975, law and order situation improved. Assurdly, the students stopped unfair means and irregularities in the examinations—the food subsidy was abolished by fifty per cent by 1976 and later in full.

Soon after the first fair and democratic elections in July 1977, the Sheikh assumed power again and as a charismatic leader, he was given a clear mandate by the people. Though Pt. P.N. Bazaz calls it "Democracy Through Intimidation and Terror" yet the assumption of power was believed to be great success by the Kashmir public opinion. In due course of time, the administration with the corrupt bureaucracy relegated to the same negligence and lethargy as it did before the Sheikh's assumption of power. The intelligence and police used the same old tactics which it used during Sadiq's and Qasim's regimes. The folklore used against Sadiq was that he could not move from his house for nearly two days as police did not permit him to come out of it ostensibily for security purposes.

A serious event during 1980 marks a new dimension in the National Conference approach to the State problems. A minor road accident involving an army truck near Budshah Chowk Srinagar snowballed into a mojor riot between 26th and 27th night of July 1980. It should have passed off as a trifling incident but became a major riot when a group of civilians at Amirakadal belaboured the Truck Driver and presented him before a police officer. The Jawans, instead of reporting the matter to the higher authourities for getting their driver released, succumbed to the provocation and retaliated by setting several taxis and shops on fire, resulting into a mob desparation and consequently violence. The Sheikh's courage to speak to the people at Lal Chowk and controlling the passions of the people was commendable. However, such trifling accidents lead to political estrangement and re-open among the pupulace the question of accession.

The events during the last overthree decades has shown

that political party system in Kashmir represents a dichotomy. Neither has the National Conference remained consistent in its goals and objectives nor has its organization continued with the same name. The nomenclature of the party has changed in accordance with the expediency of time and necessity. The Muslim Conference after the upheaval of 1931, was converted to the National Conference in 1939, and in 1953, it split into two groups. The one led by the Sheikh, giving it the name of the Plebiscite Front as founded by Mirza Mohammad Afzal Beg, the other crowned by Bakhshi Ghulam Mohammad. The present National Conference is the reconverted Plebiscite Front and the present Pradesh Congress, the National Conference of Bakhshi Ghulam Mohammad. The actors, by and large, remain the same as the National Conference of pre-independent Kashmir with some young blood included in the organization thereafter. The obectives and goals remaining the same as claimed by the Natianal Conference before 1947—namely socialism, secularism and democracy.

The vacillation of leaders in their commitments from time to time after 1947 would have estranged completely the leadership from the masses but the charisma of the Sheikh. In spite of blistering criticism of Pandit Prem Nath Bazar, then editor of the influential daily Hamdard, the sincerity of the leaders and the organizations, before 1947, could not be doubted, but it was shattered in post-1947. The power struggle after 1947 resulted in the disunity of the organizations and hence the Kashmiri became politically confused. The partition of India had already left him with a confused mind between the accession to India or Pakistan. Assuredly was the mind of Mahjoor to represent the same confusion when he sang :

"Sacrifice everything for India,
But my heart is content with Pakistan".

Even today a Kashmiri after 1971, when Pakistan was cut to size, rationally approves of accession of the State to India but sentimentally he has sympathy with Pakistan. On the call of hartal by Mr. Z.A. Bhutto, after Indira—Sheikh Accord,

Kashmiris observed it with all emotion. At the same time on the Sheikh's return from Jammu, after his assumption of power, equally sagacious reception awaited him. When Mr. Bhutto met an untimely death, there was sincere and wide-spread mourning in the Valley which led to violence also.

During 1981, a new political atmosphere has ushered in, in the State. The Sheikh has decided to leave power to his son Dr. Farooq Abdullah. The young Abdullah has already been elected to the attractive position of the President of the National Conference. The people having high hopes with the new leader, consider him a natural consequence of the Sheikh's charisma. The new leader, a doctor by profession, is energetic and dynamic. His latest contribution along with the great Sheikh is the amalgamation of the Inqilabi National Conference into the National Conference, though its one leader claimed at a press conference that Mirza Mohammad Afzal Beg had no power to dissolve the organization without taking its Working Committee into confidence. Further, father and son, have been in a position to tame Maulana Farooq in accordance with their wishes. Maulana Farooq, political child of Bakhshi Ghulam Mohammad, could stand the comparison with the Sheikh in politics but for his own contradictions.

These eventful decades have direct relevance to the administrative design in the State of Jammu and Kashmir. In the next chapter we examine how the bureaucracy spreads its grip over the entire State administration and tries to fulfil the objectives of the politics rather than the objectives set out in the Indian Constitution and the State Constitution as well.

CHAPTER IV

Administrative Design

The Maharaja Hari Singh of Kashmir who governed the State, untill its accession to India, had inherited and improved administration in the State, Consequently, a well-shaped copus of administration was in existence when the popular government took over. However, the administration had some elements which had either to vacate as they could not be trusted or did not represent majority properly.

The history of the civil administration in Jammu and Kashmir reveals that when the Maharaja Hari Singh was the senior member of the then State Council in early twenties during the rule of his uncle orders were issued to provide for (1) employment of state subjects only to all ordinary vacancies and (2) grant of lands for house buildings and other purposes to statesubjects only. A Committee was also appointed consisting of certain official and non-official members to suggest a definition of the term state subject. Non-state subjects opposed the measures bitterly but there was on going back. The definition proposed by the Committee was accepted and orders to the effect were issued under Judicial Department Notification No. 1-L-84 dated the 20th April, 1927.

A Committee was appointed as early as 1923 to consider the future requirement of the different departments in technical qualifications and experience and make proposals for grant of

scholarships for training to qualified state-subjects. This Committee was reconstituted in 1927 as the Scholarship Selection Board. The board selected nearly thirty state subjects before the II World War to receive training in several institutions in Europe, America and British-India. The training was promised by the Board in civil engineering, Architecture, Town Planning, medicine, Vaterinary Science, Pharmaceutics, Harticulture, Sericulture, Forestry, Printing, Law and Public Administration Training both academic and technical was also imparted to the state subjects in Indian institutions. The lump sum provision was made in the budget of 1937-38 for grant of loans to persons desirous of prosecuting advance studies or undergoing abvanced or special training in India or abroad. These loans were continued to be paid uptill 1947. In the post-1947, interest free loans were granted and in higher magnitude and continue till this date.

The Maharaja of Kashmir, after the upsurge of 1931, tried to appease the Muslims of the State. Consequently, in his proclamation on 9th July, 1931, he declared that while in the matter of service, prior considration would go to public interest and maintaining the efficency of administration, adequate representation to all communitias in the services without giving any preponderance to any commuity, shall be provided. The publication of the report of the Glancy, Commission further ensured a fair representation to the Muslims. The publication was also followed with rules relating to recruitment to and Gazetted non-gazetted services. Before 1947 there were 5,070 Muslim officials, including 150 Gazetted officials out of a total strength of 13,790 officials including 525 gazetted officials in the superior service. In the inferior service, Muslims numbered 3,760 out of a total strength of 7,934 in April 1945 against 3,542 out of a total strength of 8,360 in April 1932. According to government sources, by April 1945 the Muslims formed about 40 per cent of the total strength of the civil services. Whether these Muslims were State-Subjects or not is doubtful.

The post-1947 witnessed a mighty expansion in the civil service, both in emergency administration and later in normal

administrative functioning. Each department expanded from time to time. The Constitution of Jammu and Kashmir provided in its Chapter IX matters relating to recruitment and conditions of serving of persons serving the State. The legislature is empowered by law to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the State. During the absence of or, in the presence of, delegation of such power to the Governor, the Governor has a power to direct and to make rules regulating the recruitment and the conditions of service of persons appointed in the State. Every member of the civil services, except as expressly provided by the constitution, holds his office during the pleasure of the Governor of the State. The Governor has also a power to grant compensation if, before the expiration of a contract, the post is abolished or the person has to be removed in public interest. No person who is a member of a civil service of the State or holds a civil post under the State shall be dismissed or removed by an authority subordinate to that by which he was appointed. A civil servant shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such enquiry, to impose on him any such penality, untill he has been given a reasonable opportunity making representation on the penality proposed, but only on the basis of the evidence, adduced during such inquiry. This right of a civil servant is not applicable to such a person who is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge or where it is reasonable not to conduct such an inquiry or Governor is satisfied that such inquiry is not necessary.

The Constitution for the purposes of regulating civil services creates a Public Service Commission, under the provisions of the Constitution. Its members are subject to the appointment by the Governor provided one-half of them is appointed with due regard to such persons who at the dates of their respective appointments have held office for at least ten

years under the Government. A member of the Commission holds office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier. However, the members are liable for removal on the grounds of misbehaviour provided a reference is made to the High Court by the Governor and if the court confirms the charge. The disqualification for removal of the Chairman of the Public Service Commission or other members also include :

(1) if the Chairman or any other member is adjudged an insolvent or engages his term of office in any paid employment outside the duties of his office or is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body.

The Governor has power to make regulations as to the conditions of service of members and staff of the Commission. He has power to determine the number of members of the Commission and their conditions of service. The number of members of the staff of the Commission and their conditions of service are determined by the Governor through regulations.

The functions of the Commission are related to the conduct of examinations for appointments to the service of the State. For example it conducts the examinations for K.A.S., K.P.S. and K.C.S. (Judicial) and examinations relating to taxation officers and revenue officers. The Commission is consulted on all matters pertaining to methods of appointment to civil services and for civil posts. It also recommends the principles to be followed in making appointments to civil services and for civil posts, and also in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers. It also provides advice relating to all disciplinary matters affecting a person serving under the Government including memorials or petitions relating to such matters.

The Commission is presided over by a Chairman, in whose

absence on account of inability to perform his duties on any reasons, those duties are, until some person is appointed, performed by any other persons appointed by the Governor. This is usually the senior member who acts as the Chairman. The Legislature has the power to extend by an act the functions of the Commission. The expenses of the Commission, including any salaries, allowances and pensions payable to or in respect of the members or the staff of the Commission, is charged on the Consolidated Fund of the State. It is the duty of the Commission to present annually to the Governor a report as to the work done by the Commission. The Governor on receipt of such report may cause a copy thereof together with a memorandum explaining, as respect the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance is to be laid before the Legislature.

For the last many decades, in particular since the promulgation of the Constitution of Jammu and Kashmir and the Constitution of India in its application to the State, many statutory materials relating to public services were issued from time to time. The rules relating to salaries, leave, pension and travelling and other allowances are provided for in the Jammu and Kashmir Civil Service Regulations. There are existing rules regarding recruitment to public services and rules pertaining to inservice cadres and ranks. The rules dealing with a number of important matters relating to public services in general including recruitment, promotion, seniority and disciplinary proceedings were originally sanctioned by Government in March 1939 and were called State Civil Service Rules (General). These rules were revised and replaced by the rules of the same name in 1954 by Cabinet Order No. 1227-C of 1954 dated 16th September, 1954.

The aforesaid rules of 1954 were replaced by the Civil Service (classification, control and appeal) Rules 1956, which were sanctioned by Government under Order No. 962-C of 1956 dated 14th June, 1956, in exercise of the powers conferred by sub-section (1) of section 3 of Jammu and Kashmir Civil Service (Removal of doubts and Declaration of rights) Ordinance, 1956. This Ordinance was later replaced Act No. XIV of 1956, under the same name. By virtue of Section 127 of the Constitution of Jammu and Kashmir, these rules continue to be in force as if made in exercise of the powers conferred by the Proviso to Section 124.

The Statutory provisions made by the State, besides the Jammu and Kashmir Civil Service, Disciplinary Proceedings Tribunal rules, 1958 and safeguarding of security of State rules 1962, with respect to disciplinary matters are many. Being scatterred they were published collectively in several volumes containing the laws of the State. Apart from the penal law relatingto bribery and corruption by public servants contained in the Ranbir Penal Code and the Prevention of Corruption Act, Smvt. 2006 (1949 A.D.), the State has enacted several measures for administrative action in respect of the same matter which, stated in chronological order, are as follows :

1. The Jammu and Kashmir Public Servants Inquiry Act, Smvt. 1977 (1920 A.D.).
2. The Prevention of Corruption Ordinance, Smvt. 2001 (1944 A.D.).
3. The Public Servants Transfer of Immovable Property, Smvt. 2004 (1947 A.D.).
4. The Jammu and Kashmir Servants Prevention of Corruption (Commission) Act, 1962.

The Prevention of Corruption Ordinance was promulgated by the Maharaja of Kashmir, on the advice of Late Sir B.N. Rao, an eminent jurist. The said ordinance and the ordinance on the Public Servants Transfer of Immovable Property were promulgated by the Maharaja in exercise of his inherent legislative powers vested in him by Section 5 of the Jammu and Kashmir Constitution Act, Smvt. 1996 (1939 A.D.) Except the Jammu and Kashmir Public Servants Inquiry Act, 1920 A.D. which corresponds to the Indian Act No. 37 of 1850, the remaining three measures are peculiar to our State and have, according to R.K. Kaul, no parallel anywhere in the rest of country.

Recruitment to public services has two dimensions, as the services in the State are divided into gazetted and non-gazetted cadres. Sometimes the non-gazetted cadres are named as subordinate services. Consequently, there were originally two separate sets of recruitment rules. The one dealt with gazetted services in general and the other with the non-gazetted services. It is a matter of recent development that separate rules relating to individual services have been made. Rules relating to gazetted services have been framed and certain regulations have been framed in respect of a few non-gazetted services. Let me examine both the services separately. The first step in regard to gazetted services was taken in 1939, when public services were classified into different services and rules prescribing the procedure relating to recruitment of these services were sanctioned by Council Order No. 1328-C of 1939. These rules *inter alia* prescribed general qualifications for all services and technical qualifications for certain services, the prospective in which appointment of direct recruitment and by transfer from specified categories in various services was permissible, and also made provision for competitive examination for direct recruitment to certain services and for special tests and trainings for probationers in some services. This cadre of services was also classified, sanctioned vide Order No. 1630-C of 1955 dated 1st October 1955. The order of 1939 is mostly modified and it relates only to such services for which either fresh or amended rules have not been framed so far. There are two services in regard to which the rules now made provide only for recruitment. One of them is K.C.S. (Judicial) the appointment to which is governed by the Jammu and Kashmir Judicial Service (Recruitment) Rules, 1967. The rules for the gazetted and non-gazetted service of the Jammu and Kashmir Transport Department, were made in 1955. Later, in pursuance of the policy to have separate rules for gazetted services, the Jammu and Kashmir Government Transport Undertaking and Transport Commissioners Organization (gazetted) Services Rules 1970, were made. Consequently, the Rules of 1955 ceased to be operative.

The pay scales or grades of various posts in the government have undergone many changes. These scales have been revised several times. Even the Jammu and Kashmir Civil Services (Revised Pay) has undergone not less than thirty nine amendments so far. Presently, the pay scales have undergone drastic changes and amendments in the rules since the orders of 1939 and 1955. Further, dearness allowance, as admissible to Central Government employees, has been granted to the State Government employees. Its instalments are being released to the employees from time to time.

Let me now discuss the present Constitution of the Kashmir Administrative Service. In the orders of 1939 and 1955 this Service was termed as Kashmir Civil Service (Executive) and was generally confined to the services of Revenue departments only. However, during the first two or three years in early forties recruitment to departments of Revenue, Cooperatives, Audit and Accounts, Customs and Excise was made on the basis of a competitive examination for K.C.S. (Executive). This Service was abolished and the Jammu and Kashmir Administrative Service was introduced in 1962 by SRO-3 of 1962, which extended its domain over many other departmental services. The order was replaced under SRO-188 of 1965 and was reconstituted comprising not only the Executive/Revenue Service, but also some posts from the erstwhile cooperative service, excise service and other services also. This reconstitution of the Service, entitled the rules relating to competitive examinations for direct recruitment to the service and departmental examinations for members of the service. The Council Order No. 1328-C of 1939, SRO-164 and Government Order No. 159-C of 1966, do provide or repeal the rules regarding these examinations. As regards departmental examinations, it may be said that these were in vogue even before 1947, in case of Naib Tehsildars and Tehsildars etc. In 1964, departmental examination rules for Naib-Tehsildars, Tehsildars and Deputy Commissioners were provided under Government Order No. LB-137/64 and superseded in October 1964 under SRO-345 of 1964, but by a corrigendum issued by Revenue department in 1965 Government Gazette, a separate syllabus was provided for these departmental examinations. The rules

provided in 1964 and 1965 were reconstituted under SRO-455 of 1968, with an exception in case of Naib Tehsildar examinations. However, those persons who had appeared and given four consecutive chances irrespective of the number of chances availed of by them under the said rules. The present position therefore, is that in regard to Naib Tehsildars the rules issued under SRO-345 of 1964 and in regard to I.A.S. and K.A.S. and other officers, the rules issued under SRO 455 of 1968 are in force.

With regard to the rules relating to recruitment of non-gazetted services, different measures were adopted from time to time. Rules regarding the classification of and the method of recruitment to superior non-gazetted services were for the first time sanctioned by Council Order No. 29-C of 1942. These rules among other things classified the subordinate services into a number of services, prescribed general qualifications for all services and special qualifications for certain services laid down the method of recruitment for the same. Later these rules were superseded by the rules laid down in Council Order No. 1296-C of 1954. The Jammu and Kashmir Subordinate Service (Recruitment) Rules, 1963 were sanctioned by SRO-414 of 1963. These Rules provided for constitution of Selection Boards at the State and Provincial levels for direct recruitment to non-gazetted appointments in various services. These rules were rescinded by SRO-220 of 1964. This SRO-220 provided for constitution of District Selection Boards for recruitment in various services other than State service. The maximum of the posts in both cases are those exceeding Rs. 80.00 per month. The rules of 1963 as well as those of 1964 withdrew from all administrative authorities the power of recruitment in respect of services, appointment of which was assigned to the respective Selection Boards in persuance of these rules. These rules of 1964 were repealed by SRO-231 of 1965. This order that the appointments be made as envisaged under earlier order of 1964 subject to two conditions. Firstly, the minimum qualifications for a post shall be fulfilled and secondly that the competent authority shall act in previous consultation with the Minister-

in-Charge. Later a Cabinet Sub-committee was formed to formulate government policy, from time to time, with regard to recruitment.

Regarding decentralization and recruitment of non-gazetted cadres rules were further issued under SRO-5888. The SRO repealed the earlier rules under SRO-231 of 1965. The rules classified the non-gazetted services in three cadres the State Cadre, the Divisional Cadre and the District Cadre and provided for the constitution of the State Recruitment Board, the Divisional Recruitment Boards, and also for that of a departmental promotion committee for each department at the State and Divisional levels. These recruitment Boards made selections for various inservice promotions within their cadres. The competent authorities are required to make appointment in accordance with such selection. However, it (SRO-588 of 1969) expressly states that all matters not expressly provided for under these rules shall be regulated by the rules and orders applicable to the services in general. The non-gazetted posts in the Police Department have however, been exempted from these rules. The result of the above measures is that the rules of 1942, with classification as modified by the order of 1954, have full effect in regard to matters not expressly provided for by the Rules of 1969. For few non-gazetted services the rules of 1942, as modified in respect of classification of services by Cabinet Order No. 1296-C of 1954, have ceased to be of any effect. Being difficult to go through the pay scales of existing enormous public servants, the pay scales, in case of gazetted officers provided for in the Rules of 1942/1954 were omitted. It is desirable here to refere to the Government Servants Conduct Rules of 2001/1944 A.D., revised sanctioned and issued under SRO-47 of 1971, dealing with the public demonstrations in honour of Government Employees, criticism of government and also with regard to demonstrations and strikes by the government servants. It also lays down rules with regard to the position of an employee towards subscriptions to associations, lending and borrowing money, unauthorised communication of information and his connections with

Press and Radio.

The State, in its administration provides a dichotomy, not in the sense of control but in the sense of the geographical position of the three regions. The Jammu Province has a separate identity and Ladakh represents another unit and the Valley excluding Gurez and Karnah as separate cultural identity. In its administrative control in rural areas usually a village is a basic unit and in urban areas a Mohalla, however, the patwar is a basic local area. These local areas have been demarcated on geographical contiguity. This Patwars is a basic unit, with the Niabat as a conglomerate of patwar and the tehsil as a sub-district unit. Some Tehsils put together form a district and then three regions representing as three Divisions each with a Divisional Commissioner as the controlling authority. Finally, at the top level you have the government of the secretarial level.

In the post-1947 Administrative design expansion is a constant feature but there is little improvement. During the era between 1947 to 1953, over centralization under the leadership of National Conference wastthe rule. The administration was effective but non-democratic. During the period 1953-1964, the administration remained in the hands of Bakhshi Ghulam Mohammad comparatively the ablest but was steeped in corruption. The special feature of the administration was quick decision-making. The administrative set up during Shamasuddin's regime failed miserably. After Shamasuddin it was democratized by Ghulam Mohammad Sadiq but lost its effectiveness. Qasim's administration retained the status quo in relation with his predecessor. The present administration was very effective in the beginning but has now slipped into its traditional lethargy.

The above pages reveal that from time to time the rules were framed to regulate the recruitment, promotion, demotion, dismissal or reinstating, training, discipline and pay scales of the public servants. However, N. Dean, in a booklet entitled, „The Curse and the Political Catastroph of Kashmir"

comments, "The Civil Administration lost what little virtue it had before 1947. The emotional ordeal began after a short pause. Nobody had the power to speak or open his mouth against its abuses and other abominable features which upset everything". We find during last three decades indignation and outcry against favouritism in recruitment, undue promotion, official immorality and red tape rampant in the administration. When it suited the bureaucracy the posts remained vacant, otherwise favourits were appointed if available. Bureaucrats, especially the Secretaries of various departments in the Secretariat, have secured all favours from them and help each other controlling from top to the bottom. Dedicated deligent and young IAS officers on deputation from Central Government had usually to run away owing to maladjustment in the administration in Kashmir and those of the officers who adjusted, made money and went back with security. Dedicated civil servants in the gazetted and non-gazetted cadres were never encouraged, with the result that sychophants got pushed to higher positions, rendering the whole administration as inefficient. Politics rather than Constitution and ethics regulated the behaviour of civil administration in Kashmir.

CHAPTER V

Political Pulls and Pressures

The history of politics in the Jammu and Kashmir State is the history of the Sheikh and the National Conference. The Sheikh is the architect of politics whatever its dimensions at present. He shaped it and stimulated it. His activism as early as 1931, resulting in the establishment of the National Conference on the dado of the Muslim Conference, paving a way for the document of the Naya Kashmir and finally independence in 1947, is the net achievement of the charisma of the Sheikh and the organization.

The meeting of the Muslim Conference Working Committee held on 28 June 1938 adopted the historic resolution that the time required all progressive forces to rally round one banner and fight for the achievement of responsible government. Consequently, the Working Committee recommended to the General Council to change the nomenclature and Constitution of the Muslim Conference to suit all such forces to participate in a political struggle. Thus by 11th June, 1939 a plenary session of the Muslim Conference endorsed the resolution of the Working Committee. Accordingly, the secularization of politics in Kashmir and redefining of goals and objectives helped in bringing the Indian National Congress and the new organization under the name of National Conference close to each other.

After 1944 the Constitution was brought up-to-date. The very first Article of the amended Constitution spelling out the aims and objectives of the organization, lays down that the party shall endeavour to establish a democratic government in the State in accordance with the principles of the economic planning envisaged in the Naya Kashmir. In the economic programme of Naya Kashmir, State control is envisaged over agriculture, industrial production, distribution of wealth and State direction for the improvement of education, health, labour, cooperatives and culture. The very first chapter of the amended Coustitution deals with the aims and objectives of the organization. It describes the various organs of the National Conference. The National Conference under the Constitution was committed to strive towards responsible government and economic planning as envisaged in the document of the Naya Kashmir.

From the inception of the Muslim Conference, and later the National Conference, politics in Kashmir were dominated by its leadership. Apart from this the domestic politics were influenced by politics outside the State, as also by the leadership from outside (British-India). In its domestic politics the leadership of the National Conference brought on the Maharaja to transfer power to the peoples' representatives and later chellenged his sovereignty and in response many commissions like "Enquiry Commission", Middleton Commission, Glancy Commission and other proclamations were made by the Maharaja to appease the people and their leadership. Naya Kashmir document was also prepared by the National Conference in response to the Royal Proclamation of 12th July, 1943. The terms of reference of this Commission included, among other things, questions about ways and means to further the progress of the people of the State, with special emphasis on their economic and political lines. Before the Commission started functioning, the National Conference decided to co-operate with the Commission. The Conference leaders were surprised to find that the Commission consisted of 'Jagirdars', feudal elements, pensioners, 'Chakdars' and vested interests. The National Conference which considered itself to be the true

representative body of the people had been given only two seats on it. Mr. Ghulam Mohammad Sadiq and Mr. Mohammad Afzal Beg were nominated to represent the National Conference on the Commission with the directive that in case the Commission works contrary to the objectives of the National Conference, they report back. These two members later returned with the plea that the Commission worked contrary to the National Conference objectives and hence the document of the Naya Kashmir was published by the organization itself as the future Constitution of Kashmir. The Maharaja had realized the importance of improving the conditions of the people and consequently he desired to give concessions to the majority community in the Valley.

The "Quit Kashmir" movement launched by the National Conference, was the direct consequence of the non-implementation of the Naya Kashmir programme by the government of the Maharaja. The National Conference had desired its implimentation after it was submitted to the Maharaja. When its importance was ignored and government was apathetic towards a political change, the National Conference rose to the occassion, gave a call and an upsurge engulfing the whole population, culminated into complete independence only after a year or so.

Thus by 1947 the masses had rallied round the National Conference, political consciousness had brought a full participation from the people and better future was clearly visible. The leadership of British-India helped the National Conference leadership right from 1931 to 1947 both in their moral tones and financial proportions. The Muslims throughout British-India resorted to Hartals, from time to time, in sympathy with the National Conference and its movement. The intellectuals, the Congress leadership, Communists and even many in the Muslim League helped the organization. However, in the last three or four years before 1947, the League withdrew its support. Earlier even Ehrars and the Kashmir Committee headed by Ulema Iqbal worked for political change in Kashmir. The poets in British India sang in sympathy with

the people of Kashmir. The Sheikh was influenced by Doctor Iqbal, Mr. Gandhi, Mr. Nehru, Mr. Abdul Gaffar Khan, Abul Kalam Azad and many more Indian leaders.

With the advent of independence in the subcontinent in 1947, the State of Jammu and Kashmir chose to accede to India after an ordeal. The confusion in which accession had to be completed has been analysed in an earlier chapter. Consequently, after the accession, as a natural consequence, the power had to be handed over to the National Conference. With the National Conference in power, Sheikh Mohammad Abdullah during the time of emergency and later as the first Kashmiri Prime Minister of the State, overshadowed the politics in the State. As soon as the time slipped, the politics of the State became the politics of the Sheikh. On the one hand dominance of the National Conference right from 1939 and, on the other, his towering personality, dominating the National Conference shaped, formed and determined the politics of the State within and without it, for the last fifty years.

The Sheikh and his party, undeniably enjoyed the dominance uptill the Jammu Stayagrah, led and abetted by Praja Parished, in late 1952 and early 1953. The origin of it was the feelIng of the leaders of the party, as given out by them, of the neglect of Jummu by the Sheikh government. The Sheikh, in his own justification had the feeling that by acceding to India, Kashmiris had to be shown broad mindedness and hence the government of India and the State ought to arrange for socio-economic development of these people. Consequently, the Jammu people looked at Sheikh's government acting against their interests both in economic and political fields. They boycotted elections in 1951, looked at agrarian reform as directed against the Dogras and considered Sheikh's government as pursuit of State's autonomy obstructing its full integration with India. Actually, the power structure in the State usually remained in the hands of its social structure, consisting of the Muslim majority. Sisir Gupta provides the following charges levelled against the National Conference, and its

leaders :—

1. Abdullah had tried to Muslimise the State in the name of secularism.
2. These had been totalitarianism in the name of democracy.
3. Civil liberties had been suppressed.
4. Steps had been taken towards the creation of an independent Kashmir.
5. The Delhi Argeement was a betrayal to the people of Jammu.
6. Kashmir was leading to a victory of the Communists.

Consequently, the aim of the Praja Parished was to secure complete integration of the State with the Indian Union, to get Article 370 abrogated and to get the Supreme Court's jurisdiction extended, which finally was realized by Indian leadership through their own favourites in the State.

Summing up the arguments by Sisir Gupta, the government of Jammu and Kashmir looked at the agitation with the view that in its character it was reactionary and that the outlook of the Dogra Rajputs was historically imperialistic in regard to Kashmir. In this controversy between the government of Jammu and Kashmir and the Praja Parished, the Indian Government and Parliament reacted sharply. The Congress, the Communists, in Parliament and the government of India sided with the government of Kashmir but all reactionary forces helped the Praja Parished. Though this crisis temporarily abated yet it created a cleavage between the Centre and the Sheikh, so much so that the National Conference, which held a dominant position between 1939 to 1953, fell from the grace of the Central leadership and the Congress organization. The reactionery forces thwarted any attempts of compromise between the Centre and the State leadership. The final result of the fall was the arrest of Sheikh Mohammad Abdullah on the 9th August, 1953.

The National Conference split in 1953 led some National Conferencites to the jails and some to power under the leadership of Bakhshi Ghulam Mohammad. This first great split was a qualitative split. The National Conference, maintained for about one decade unchallanged power in the State of Jammu and Kashmir, but it had no reputation and no mass appeal. However, it did function as a bridge between the Centre and the State. Its elections were fake, and like Bakhshi Abdul Rashid, its general secretary, the organization was totalitarian in character. It did influence the decision making body of the government. Assurdly, this National Conference was Bakhshi Ghulam Mohammad and the vice versa. His opponents regarded him as a stooge of India which they held in contempt. The group headed by the Sheikh was able to regain prestige, honour and political appeal through open confrontation with Delhi. Some people were eagerly on the watch for active armed intervention by the U.S.A. and others on behalf of the Sheikh and Pakistan and there was a lot of confused thinking and rumour-mongering. As the protesting masses were severly suppressed, the National Conference led by the Sheikh, lost its contacts with its sympathisers and with the masses. This led Mirza Mohammad Afzal Beg, on his release on health grounds in 1955, to found what is known as the Plebiscite Front.

The Plebiscite Front developed in no time into a force to reckon with. Though in the beginning the Sheikh was neither its founder-member nor its President but later he was designated as its patron. The Front stood for the right of self-determination to the people of Jammu and Kashmir to be exercised through a plebiscite supervised by neutral nations. The objective was, however, never realised. On his release in February 1958, the Sheikh raised the following three basic points in a statement :—

(1) that until the future of Jammu and Kashmir is finally decided upon, the political uncertainty, economic crisis, mental plight and other problems are difficult to to be resolved.

2) that the present crisis in the relations between India and Pakistan are not only dangerous for the stability of Asia but anticipate destruction of the State of Jammu and Kashmir, the basic reason for these bitter relations between the two dominions being Kashmir.

(3) that to determine the relations between the State of India, the final right of it belongs to the people of Jammu and Kashmir. This right can be exercised by the people through the method of plebiscite, under the impartial supervision of U.N.O., to which all the parties have agreed to, or a solution deemed to be acceptable to all the parties.

The plebiscite Front continued to be a political force uptill late 1972 without achieving what they called the right of self-determination. The Front had only one difference in comparison to the earlier National Conference. The power in the party was shared by double leadership—the two leaders were the Sheikh and the Beg. During the period from 1955, the founding year, of the Front, to 5th July 1975, the conversion of the Plebiscite Front to the National Conference, the politics of the State was politics of the Plebiscite Front.

Earlier the National Conference led by Bakhshi Ghulam Mohammad had a split in 1957. The differences in the National Conference appeared after the second general elections. The elections in Kashmir were generally rigged and actually fake until the general elections to the State Assembly in 1977. However, the elections to the State Assembly showed the National Conference, the Praja Parished, the Harijan Mandal and the independents getting 68, five, one and one seats respectively. The State Council showed the National Conference and the Teachers Federation getting 28 and 2 seats respectively. Six seate to the State Council were nominated by the head of the State. After elelctions, the Bakhsh's National Conference formed a ministry omitting Girdhari Lal Dogra, Ghulam Mohammad Sadiq, D. P. Dhar and Syed Mir Qasim. Earlier Ghulam Rasool Renzu had been defeated at the polls, ostensibily at the instance of National Conference top hierarchy.

By 1957 the above mentioned leaders announced their resignations from the National Conference Working Committee and by September 1957, a new party emerged namely Democratic National Conference. Seventeen disidents, fifteen of them legislators, appealed for the formation of a new party. Though no broad difference between the National Conference and the Democratic National Conference in its essence existed, yet both promised to strive for the establishment of the "Naya Kashmir". The Democratic National Conference group, by and large, was identified as the Communist group of the National Conference. Naturally, the Communists inside and outside India helped the progressive elements in Kashmir politics and reactionaries anticipated a danger in its emergence. However, the Sadiq group was a force that had to be recognized by the Centre and such of the Kashmiris who had considered the group as the freedom fighters before 1947.

Another important political force more important than any force since 1953 emerged in 1964. It emerged immediately after the unfortunate incident of the theft of the sacred relic at Hazratbal Shrine in December 1963. Bakhshi had already been Kamrajed. Sadiq along with his group had merged itself again into the National Conference and Shamasuddin, an ineffective personality had been elected as the Prime Minister of Jammu and Kashmir at the manouverability of Bakhshi Ghulam Mohammad. Whatever the position of the National Conference the masses had nothing to do with it. Consequently, the theft of the sacred relic aroused an uproar and engulfed everyone in the State within its domain. The uprising gave emergence to the new forces named All Jammu and Kashmir Action Committee, led by two persons : the religious leader Mirwaiz Moulvi Mohammad Farooq and the shrewd freedom fighter Maulana Masoodi. The former as an amature who wanted a recognition and the other as a political craftsman. The sacred relic was recovered but the Maulana with his party (Awami Action Committee) emerged as a force to be reckoned with. For a long time, from 1963 to 1973, the Maulana could exercise influence at the highest seats. Delhi had to recognize him and he, in due course of time, recognized Delhi as

the real decision-maker. Assuredly it has been said that Maulana Masoodi along with the young Maulana Farooq betrayed the people. It has also been stated that the whole show was to rehabilitate the Sheikh in Kashmir politics. Whatever may be merit of each theory, the fact remains that Maulana Farooq is recognized as a parallel leader, if and when the Centre requires his services, and Maulana Masoodi, a personality most ambiguous and complicated whose motives are well known to Central leadership.

The influence of Maulanas abated immediately after their entry into the Janata party facade of 1977. When the elections were to commence, Jagjivan Ram and Charan Singh visited Kashmir, the former advising the Sheikh to quit politics. Without any surprise to political analysis and Kashmirologists the Sheikh maintained his charisma and in fact surpassing his earlier achievements won a large majority of seats in the State Legislature. Though the influence the Sheikh wielded was in no case meagre, yet by securing power he had ample chance to determine its course. To what course did he guide the politics of Kashmir is to be determined in course of time.

The great force that the Sheikh is, is not the result of the political craftsmanship that he has, but the historical attached to his personality. He was the leader of the freedom struggle, jailed about two and a half years during the despotic rule of the Maharaja between 1931-47, whereas he remained under detention (for the same period) for about 14 years under democratic rule. However, whether in jail or outside the jail, the Sheikh is a force to reckon with. How long he would be able to continue with the charisma, is yet to be watched.

The political history of the Sheikh reveals that in basic political issues, he has not proved to be consistent. His commitments to socialism, democracy, secularism and plebiscite are contradiction not only in terms but in behaviour as well. His commitments still remain testifiable and verifiable. It is a big interrogation in regard to his imprisonment for about forteen years after 1947.....what for did he go to

jails ?.....Had he never determined his political goals ? Personally, I believe that in any political sociology, it is the intellectuals in party hierarchy who determine goals and objectives. Undoubtedly, the Sheikh's tragedy is that he never relied on intellectuals. Undoubtedly, while launching the freedom movement he carried some intellectuals with him. Later he denied the intellectuals a place in the organization. It is believed that the cause of political inconsistency in him lies in his denial of intellectuals to their proper role in his organization, Consequently, he could never arrive at a consensus. The State Peoples' Convention was the only platform where intellectuals figured prominently but it was too late to arrive at a consensus.

The Sheikh, or the National Conference as a political force is presently again under certain strains and stresses. Ealier it remained under stress and strain owing to a political behaviour, which reacted sharply against the political culture that was then to emerge. Consequently, the present strain is not of any serious nature but it envisages a future crisis for the organization only. The question is of this nature is rightly asked as : Who after the Sheikh ? The answer is now easy under the present context. The Sheikh finds future leadership in his son Dr. Farooq, but if leadership, so provided, fails, its cause shall lie far behind in political history. It would be the outcome of the basic contradiction that was inherited by our freedom struggle and that is pertaining to the political goals. It is worthwhile to note that as early as 1946, Late Abdus Salam Yathu, who died in Pakistan, unheard and unwept, addressing a Kisan Conference said that until it is not decided who the future rulers of the State of Jammu and Kashmir are, they would neither support Akhand Hindustan nor side with the demand of Pakistan. The prediction has come true. The Sheikh decided the future of the State, not on the basis of dialogue and discussion but on his personal set political goals. His relations with Gandhi, Nehru and others led him to fix set political goals. Naturally, the Sheikh after his release, speaking at Pratap Park in Srinagar about Nehru

said that while inviting his attention to his commitment both in Indian Parliament and the U.N. about Kashmir he said, it was a "Tamasha" or a show. Had he worked as a democrat having a consensus about political issues and goals things might have been shaped differently. However, politics is interested in what 'is' and hence it depends on what type of leadership shares power in Delhi and Kashmir. The tragedy the Congress faces in the State is that it never provided fair elections or democratization of institutions in the State. What. demerits Morarji Desai might have, his government, for the first time in the constitutional history of Kashmir provided Kashmiris a fair and impartial election.

Finally, it may be said that Sheihk's force is still felt in the State and outside the State. Though the Congress government and the National Conference do not walk together smoothly, yet Mrs. Gandhi is in no case prepared to show him down from power. It neither suits the national interest nor the interests of the people of the Jammu and Kashmir. Mrs. Gandhi, has a stature and works to that end in the State. She would see that the Sheikh is persuaded to examine and solve the problems on honourable and logical basis. Her statements in Jammu during the month of April, 1981 were replied to by the Sheikh, yet she did commit that she has no intentions of toppling non-Congress governments in any non-Congress States.

The other political forces during last three decades, in addition to the National Conference, have been some big and small political parties. There are political parties, which are national in character and other only local. In the National parties, the Congress (I), the Congress (U), the Janata Party, Bhartiya Janata Party, CPI and CPM. Amongst the local parties, besides the National Conference, are the Awami Action Committee, Jamat-i-Islami, Peoples Conference and Peoples League. Each party has a youth wing of its own. The youth wings which presently operate are Youth Federation (National Conference), Students Federation (CPM), Youth

Congress (Congress I) and Jamiu-tulaba (Jamat-i-Islami). The National Conference and Awami Action Committee influence and force is discussed in the above and the influence of the rest of the parties is lesser than of the two. The Congress (I) hierarchy has more influence both on the people and on the Central Government than other minor parties. Both wings of the Janata have some influence in Jammu but in no way operate in the Valley. A small chunk of Kashmiri Pandits belong to it but having no unity of purpose, are unable to become a force to be recognized. The Peoples Conference is a sub-local party and is trying to emerge as a local party at least in the Valley. However, the leader of the party being a constant defector, before founding his own party, has not been able to create a charisma. Its leader, Mr. Abdul Gani Lone, envisages future rise to power on the exploitation of localism. He and his party is deemed to be the alternative to the party or parties in Kashmir who do not or would not serve the purpose of Government of India. The Peoples League, a party committed to the Plebiscite in Kashmir, under the suspices of the U.N., is not being taken seriously by common man, as none of its top hierarchy has a charisma. Jamat-i Islami Kashmir, being fundamentalist in character, also reflects an inherent contradiction. On the one hand they dream of acceding to Pakistan and receive inspirations from Pakistan, on the other they in the name of God show allegiance to the Constitution of Kashmir and the Constitution of India. Their prestige and apeal has touched low for the last many years. However, it has many committed votes.

These forces apart, some non-party forces are emerging. Amongst an earlier force or a pressure group namely the K.M.D. (Kashmir Motor Drivers Association) has played an important role from time to time. This Association has influenced many a time decisions regarding laws relating to the transportation in the State. Assurdly, has the association helped the National Conference many a time out of crisis. It has helped the National Conference often financially also. During the Sadiq regime when the idea of nationalization of the

transport was mooted, great opposition from the transporters relegated the concept for some time to the oblivion. During the Bakhshi's time, the J&K Teachers Association played a vital role in making legislation regarding education. Though vested interests did not permit education to flourish, yet Bakhshi's Administration did not at all interfere in academics of the University, College and School education. However, during Sadiq's regime, too much interference in education deteriorated its standards and finally led to anarchy in educational examinations and standards, which was controlled only after Sheikh's assumption of power.

During the freedom movement all labour unions supported the cause of the National Conference because not only did it produce men of conviction but its programme pertaining to economic and political life of the people of Kashmir were progressive. As early as 1847, labour first rebelled against the ill-treatment meted out by the administration and again in 1865 and 1924 labur in Silk Factory, Srinagar struck the work. The post-1947 period witnessed many more labour unions/ organizations, like the Central Labour Union, Jammu Terpentine Labour Union, Rent Payers Association, Teachers Association, Telegraph Employees Association, Low Paid Employees Association, College Teachers Association and Kashmir University Teachers Association. Presently, there are almost as many associations as there are departments in the government. Each of the Association strive for their own professional interests. There are other associations, having little to do with government. These are Fruit Growers Association, Agriculturists Association, Masons, Carpenters and a number of associations. The Orchadist class as such is a potent force, in the Valley to reckon with.

With regard to different associations it was unfortunate that education could create no organization in terms of a pressure group. Though during the last three decades, several attempts in this direction were made yet usually they failed in the achievement of its goals. Instead of organizing a group, it was building individual personalities through

backdoor entries or through a chance of being in the academic top hierarchy in the government. These personalities in the hierarchy, in due course of time, proved to be opportunists except Professor G. M. Hajini and consequently left neither any traditions in the educational system nor any philosophy to be followed. However, as late as 1968, the Muslim Educational Trust Sopore, was established, with the objective changing not only the style of education but also the thinking of the Muslim intellegentia. The trust, with all the odds facing within a backward social and economic system, is commendably working towards the promotion of education. The Trust is emerging as a force to be reckoned with politically, through the medium of education, at least in the spheres of education. The emergence of internal contradictions in the Trust in the last two years might prove deterent and fatal to its objectives. If overcome, however, and if the power struggle in the Trust is streamlined, it might develop into a Centre next in importance only to Aligarh for the Muslims of Kashmir.

In the recent years what is discouraging in federating forces in the State, is the slogan of regional imbalance by the people of Jammu and Ladakh. After the realization of full integration of the State with India, except the provisions regarding the status of a State-subject, which too are eroded in practice through the system of lease and false certificates, the Jammu and Ladakh people, started the slogan of regional imbalance. Consequently, the first Commission was appointed and headed by the late Mr. Gajendragadkar, a retired Chief Justice of the Supreme Court of India in 1967-68 and second in 1979-83 headed by justice Sikri. The terms of reference to both of the Commissions was to locate imbalances between the two regions of Ladakh and Jammu as compared to the Kashmir region. The term of reference to Sikri Commission had the following six components :

(a) review of the policies underlying development programmes ;

(b) allocation of financial resources between different regions, and
(c) within district administration units thereof ; and
(d) recommendations of measures—constitutional or otherwise to remove imbalances, if any, with a view to,
(e) ensure equitable treatment to all regions of the State and to district administative units within such regions; and
(f) to bring a sense of satisfaction in the integrated development of the State among the people living in such regions and among district administrative units within such regions.

The recommendations of these Commissions were by and large to remove the grievances of the people of Jammu Division and those of Ladakh Region. In the Sikri Commission report, however, it was recommended that to study and correct development imbalance the government should compile figures as per capita income at current prices by regions and district administrative units and undertake studies which indicate per capita expenditure by fractile distribution of the population in the State, region and district administrative units, using as approperiate, the surveys that National Sample Survey and Reserve Bank of India undertake.

Whatever the motivations for or consequences of the appointment of Commissions, the fact remains that a wedge is being created amongst the three regions and we find opposing slogans raised and wall posters pasted. In Jammu we find posters advocating unity on the basis of language and race by calling "We are Dogra Desh and our language Dogri". In Kashmir we find the posters on the walls calling "Be Kashmiri and learn Kashmiri" and in Ladakh Division in January 1981 protests and processions were held and slogans raised in favour of a separate entity.

In most of the societies there is always a political force, in addition to others, which favours the establishment, whether

committed or non-committed. In Kashmir, it has a definite and distinct appearance to pose. During the Maharaja's time a mercenry class stood for the establishment which included fifth columnists and during Sheikh's first rule between 1947-1953, the National Conference volunteers could do anything they liked. During Bakhshi's rule, Kashmir was defamed by an organization named by the Peace Brigade (29.15) which upheld the cause of the regime and suppressed the opponents. The post-1977 period has evolved another group of people named "Surwal" in Srinagar believed to be stipendaries, whose main task is to help the government through intimidation and terror of dissedents. Such groups, no doubt, constitute a force and are yet a deciding factor in the political life of the State.

The Pandits representing a starata, is a force to be reckoned with. This force is not a force as much on account of its organization but because of its laison with the Centre. Many Pandits, since 1947, hold very fine positions in the Central departments in Delhi and consequently, they have created a lobby which protects their rights both in the Central and State Governments. It is a force that has usually decided the fate of many rulers of the State. It is believed that they had a hand in the fall of the Sheikh and the Bakhshi. Whether this lobby is so strong or not is debateable, but the fact is that most of them due to this lobby find jobs in Central and State Governments. Writes Pt. Anand Koul to explain my contention as, "Batah Batah Kaw Batah (the Pandits are like crows) is a proverb, showing that the Pandits help and sympathise with one another like crows who are gregarious and who, on finding any food anywhere, caw aloud inviting others of their own species to share it with them."

CHAPTER VI

The Constitutional Framework

The people of the State had, in their struggle for freedom from 1919 to 1947, raised the slogan for democracy and consequently a responsible government was envisaged. Early in 1951, the National Conference, therefore, made an announcement that they would convene a Constituent Assembly with the aim of deciding the future of the State regarding certain vital matters including the accession issue. Yuvraj Karan Singh, the Regent issued a proclamation on April 30, 1951, directing that "a Constituent Assembly consisting of the representatives of the people elected on the basis of adult franchise be constituted forthwith," for specific purposes.

The Assembly was supposed to draft a Constitution and was to be elected by direct secret ballot on the basis of adult franchise. The Kashmir Constituent Assembly first met on 31 October, 1951 and completed its task of Constitution-drafting on 17 November 1956. All the seats in the Constituent Assembly were proclaimed to have been won by the National Conference, defeating some independents. The Praja Parished had boycotted the elections. The elections were, however, far from being fair.

The Constitution so enacted, till now, governs the State. There are still some sections of the people who do not

consider it legitimate. However, the accord between the Sheikh and Mrs. Indira Gandhi, the elections of 1977, giving mandate to the National Conference, consequently ratifying the Constitution, provide legitimacy to all the governments in Kashmir so far. The Constitution in its preamble solmnly resolves, in pursuance of the accession of the State to India, to further define the existing relations of the State with the Union of India to secure for the people :

Justice, Social, Economic and Political ;
Liberty of thought, expression, belief,
faith and worship ;
Equality of Status and of opportunity, and
to promote among us all ;
Fraternity assuring the dignity of the individual
and the unity of the nation.

After providing the title of the "Constitution of Jammu and Kashmir" and its operation it defines certain phrases and words in its prelimineries. In part II it defines the relationship of the State with the Union of India and declares Jammu and Kashmir as an integral part of the Union of India. It declares that the territory of the State shall comprise all the territories which on fifteenth day of August 1947, were under the sovereignty or suzerentiy of the ruler of the State. It also vests in the State the executive and legislative power to extend to all matters except those with regard to which Parliament has power to make law for the State under the provisions of the Constitution of India.

Part III of this Constitution explains the position of the permanent residents of the State or what is called the State Subjects. It declares every person who is, or is deemed to be, a citizen of India under the provisions of the Indian Constitution shall be permanent resident of the State, if on the fourteenth day of May, 1954—

(a) he was a State Subject of Class I or of Class II ; or
(b) having lawfully acquired immovable property in the

State, he has been ordinarily resident in the State for not less than ten years prior to that date.

Such persons, who, before the fourteenth day of May 1954, were State Subjects of class I or of Class II and who, having imigrated after the first day of March, 1947, to the territory now included in Pakistan, return to the State under a permit for settlement in the State or for permanent return issued by or under the authority of any law made by the State Legislature shall on such return be permanent residents of the State.

The terms 'State Subject' and 'permanent resident', as such, were not initially defined by the Constituent Assembly. It, however, had to take cognizance of State Notification No. 1-L/84 dated the 20th April, 1927, read with State Notification No. 13/L dated the 27th June, 1932. However, Part III of the Constitution does not debar the legislature of the State to make any law defining residents of the State. The Section 9, of part III of the Constitution makes the amendment to the permanent residents rigid. It provides special rules for defining altering the classes of persons or conferring, regulating or modifying, special rights or privileges to permanent residents. It lays down that a bill relating to these matters shall be deemed to be passed by either House of the Legislature only if it is passed by a majority of not less than two-thirds of the total membership of that house. However, the permanent residents enjoy all the rights guaranteed to them under the Constitution of India, within the provisions of part III of Jammu and Kashmir Constitution.

Part IV of the Constitution of Jammu and Kashmir relates to the Directive Principles of State Policy. After explaining that State includes the government and the legislature and local or other authorities, it declares these principles not enforceable by any court of law. It, nevertheless declares them fundamental in the governance of the State and makes it to be the duty of the State to apply these

principles in making laws. This part promises to establish a socialist order of society for the promotion of the welfare of the people. It lays down that the prime object of the State constituent with the ideals and objectives of the freedom movement envisaged in "New Kashmir" shall be the promotion of the welfare of the mass of the people by establishing and preserving a socialist order of society wherein all exploitation of man has been abolished and wherein Justice,—Social, economic and political—shall inform all the institutions of national life. It declares that economy of the State is to be developed in a planned manner. Consequently, the productive forces of the country shall be used with a view to enriching the material and cultural life of the people and foster and protect :—

(a) the public sector where the means of production are owned by State ;

(b) the co-operative sector where the means of production are cooperatively owned by individuals or groups of individuals, and

(c) the private sector where the means of production are owned by an individual or a corporation employing labour, provided that the operation of this sector is not allowed to result in the concentrations of wealth or of the means of production to the common deteriment. These all provisions relate to the establishing of a socialist society and the other whereby exploitation in the economic field is totally abolished.

The government of the State is also directed to organize and develop agriculture and animal husbandry by bringing to the aid of the cultivator the benefits of modern and scientific research techniques so as to ensure a speedy improvement in the standard of living as also the prosperity of the rural masses. It is also provided that the State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. The State shall, in order to rehabilitate, guide and promote the

renowned crafts and cottage industries of the State, initiate and execute well-considered programmes for refining and modernizing techniques and modes of production, including the employment of cheap power so that unnecessary drudgery and toil of the workers are eliminated and the artistic value of the products enhanced, while the fullest scope is provided for the encouragement and development of individual talent and initiative.

Under the instructions of this Chapter, the State was to take steps to separate judiciary from the executive in the public services. It is to strive to secure a judicial system which is humane, cheap, certain, objective and impartial whereby justice shall be done, and shall further strive to ensure efficiency, impartiality and incorruptibility of its various organs of justice, administration and public utility. The separation of judiciary from the executive was, under a government notification during the time of Mr. Ghulam Mohammad Sadiq, operated. The State is excepted, within the limits of its economic capacity and development, make effective provision for securing :—

(a) that all permanent residents, men and women, equally have the right to work, that is, the right to secure guaranteed work with payment for labour in acccordance with its quantity and quality subject of a basic minimum and maximum wage established by law ;

(b) that the health and strength of workers, men and women and the tender age of children are not abused and that permanent residents are not forced by economic necessity to enter avocations unsuited to their sex, age or strength ;

(c) that all workers, agricultural, industrial or otherwise, have reasonable, just and humane conditions of work with full enjoyment of leisure and social and cultural opportunities ;

(d) that all permanent residents have adequate maintenance in old age as well as in the event of sickness, disablement, unemployment and other cases of undeserved want by providing social insurance, medical aid, hospitals, sanitoria and health resorts at State expense.

The Directive Principles of State Policy further require the government to secure to every permanent resident the right to free education upto the University standard and compulsory education for all children until they complete the age of fourteen years. It also ensures to all workers and employees adequate facilities for adult education and part time technical, professional and vocational courses.

The rights of children are envisaged by securing to all children the right to happy childhood with adequate medical care and attention and to all children and youth equal opportunities in education and employment, protection against exploitation and against moral or material abandonment. The rights of the women are safeguarded by directing the State to secure to all women :—

(a) the right to equal pay for equal work ;

(b) the right to maternity benefits as well as adequate medical care in all employments ;

(c) the right to reasonable maintenance extending to cases of married women who have been divorced or abandoned ;

(d) the right to full equality in all social, educational, political and legal matters ;

(e) special protection against discourtesy, defamation, hooliganism and other forms of misconduct.

Further, protection of educational, material and cultural interests of socially and economically backward sections is promoted. It is also the duty of the State to improve public health and foster equality and secularism. Thus the Directive Principles of State Policy are the cherished desire

of the Constitution makers to implement the goals they had fought for during the freedom struggle between 1931 and 1947 and provided for in the New Kashmir. These principles are a miniature form of the principles as provided in the Constitution of India as well. In the National context the freedom struggle in Jammu and Kashmir was a part of the National struggle and consequently the objective is the welfare State. These principles in the State Constitution are mostly the cherished desires of all the developing nations.

Part V of the Jammu and Kashmir Constitution deals with the provisions relating to the executive in the State. It provides that the head of the State shall be the Sadar-i Riyasat, later it was substituted by the word 'Governor',—who in his capacity as such exercises the executive powers either directly or through officers subordinate to him and in accordance with the provisions of the Constitution of Jammu and Kashmir. This power shall not be prejudicial to transfer to the Governor any functions conferred by any existing law on any other authority or prevent the State Legislature from conferring by law functions on any authority subordinate to the Governor. The Governor is appointed by the President of India by warrant under his hand and seal.

The Governor holds office during the pleasure of the President. Dr. Karan Singh, acted as the first Sadar-i-Riyasat uptil the Constitution of Jammu and Kashmir (Sixth Amendment Act, 1965, and consequently upon his entry into politics, Mr. Bhagwan Sahay was appointed the Governor of the State. He was the first non-State Subject as envisaged by the Constitution of India. He was succeeded by Mr. L. K. Jha as the Governor who is succeeded by Mr. B. K. Nehru. The Governor has the right to resign from his post under his hand addressed to the President. Usually, the Governor holds office for five years but the term is extendable. Mr. L. K. Jha enjoyed the extended period. The Constitution provides that the Governor hold his office until the successor enters upon the office. No person is

eligible for appointment to the office unless he is a citizen of India and has completed the age of thirty years. The Governor is not a member of either House of the State Legislature, and if he be, he is deemed to have vacated his seat in the House on the date on which he enters upon his office as Governor. He cannot hold any other office of profit. He is entiled to such emoluments, allowances and privileges as are specified in the second schedule—the emoluments in his favour are not diminished during his term of office. Before entering upon his office the Governor, and every person discharging the functions of the Governor, has to make or subscribe in the presence of the Chief Justice of the High Court or in his absence, the senior most judge of that court available, an oath or affirmation according to the form prescribed by the Constitution. The President of India has the power to make such provisions as he thinks fit for the discharge of functions of the Governor in any contingency not provided for in part V of the Constitution. The Governor has also some judicial powers. These include Governor's power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

The Governor has also the power to make rules for the more convenient transaction of the business of the government of the State and for the allocation among ministers of the said business. All the executive action of the government is expressed to be taken in the name of the Governor.

The legislative powers of the Governor encompass many vital areas. He summons each house of legislature from time to time to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session. He has power to prorogue the houses or either house and dissolve the Legislative Assembly. He has right to address and send messages to both houses either jointly or separately.

At the commencement of the first session after each General Election to the Legislative Assembly and at the commencement of first session of each year, the Governor is deemed to address both houses of legislature assembled together and inform it of the causes of its summons. If at any time, except when both houses of the legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require. However, his power of issuing an ordinance is limited only to those subjects on which the legislature has power to make laws. Such an ordinance has the same force and effect as an Act of the Legislature but is rendered ineffective if it is not ratified before the expiration of six weeks from the reassembly of the legislature or if before the expiry of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council. The ordinance may be withdrawn by the Governor. The Governor of the State has certain powers in the event of a constitutional breakdown. If at any time the Governor is satisfied that a situation has arisen in which the government of the State can not be carried on in accordance with the provisions of the Constitution, the Governor through a proclamation :—

1. assumes to himself all or any of the functions of the government of the State and all or any of the powers vested in or exercisable by anybody or any authority in the State ;
2. make such incidental and consequential provisions as appear to the Governor to be necessary or desirable for giving effect to the objects of the proclamation.

Such a proclamation may be revoked or varied by a subsequent proclamation. Its duration does not exceed six months. During the period of such constitutional breakdown the Governor may assume to himself any of the powers of the legislature, such laws having effect uptil two years and get elapsed from the date on which the proclamation ceases to have effect. A proclamation in response to the constitutional

breakdown in issued with the concurrence of the President of India. Such a proclamation was issued in March, 1977, when the Congress Legislature Party in the State withdrew its support from the Sheikh and his colleagues.

There is a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions. All functions of the Governor are exercised by him only on the advice of the Council of Ministers except those provided under Sections 36, 38 and 92. The advice is not questionable in any Court of Law under Section 35 (3). The Chief Minister is appointed by the Governor and ministers also appointed by him but on the advice of the former. The Chief Minister, as usual in a parliamentary system, is the leader of the majority in the Legislative Assembly of the State. The Council of Ministers is collectively responsible to the Legislative Assembly. A minister who for any period of six consecutive months is not a member of either house of legislature shall upon the expiry of that period cease to be a minister.

The Governor has a power to appoint from amongst the members of either house of legislature such number of Deputy Ministers as may be necessary. The Ministers and the Deputy Ministers hold office during the pleasure of the Governor. The Chief Minister, and every other minister before he or she enters upon his or her office, has to take an oath of office and secrecy, in accordance with the form set out for this purpose in the Fifth Schedule of the Constitution. The oath is to be administered by the Governor or in his absence, any person authorized by him. The salaries and allowances of Ministers and Deputy Ministers are to be determined by the legislature from time to time. Thus the salaries of the Ministers have varied from time to time.

The following are the duties of the Chief Minister of the Jammu and Kashmir State in accordance with the provisions of the Constitution :—

(a) to communicate to the Governor all decisions of the

Council of Ministers relating to the administration of the affairs of State and proposals for legislation ;

(b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for ; and

(c) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

The Constitution creates the post of an Advocate General, who is appointed by the Governor. A person is appointed as Advocate General who is qualified to be appointed a judge of the High Court. It is the duty of the Advocate General to give advice to the governmnent upon such legal matters and to perform such other duties of a legal character, as may from time to time be referred or assigned to him, by the government, and to discharge the functions conferred on him by or under the Constitution or any other law for the time being in force. He has the right of audience, in performance of his duties, in all courts of the State. The Advocate General holds office during the pleasure of the Governor and receives such remuneration as the Governor may determine.

Part VI of the Constitution deals with the composition of the State Legislature. It consists of, according to the provisions of the Section 46, the Governor and two houses to be known respectively as the Legislative Assembly and the Legislative Council. The Legislative Assembly has one hundred members to be chosen by direct election from territorial constituencies in the State. However, if the Governor feels that women are not adequately represented in the Assembly, he is empowered to nominate not more than two women to be members thereof. For the purpose of territorial constituencies, the Constitution provides that the State shall be divided into divisions (constituencies) in such a manner that the ratio between the population of each constituency and the number of seats alloted to it shall, so far as practicable, be the same throughout the State. The

population, as expressed in the relevant Section of the Constitution is explained to mean population as ascertained at the preceding census of which the relevant figures have been published. Upon the completion of each census, the number, extent and boundaries of the territorial constituencies are readjusted by such authority and in such manner as the legislature by law determines. This adjustment, however, is not to effect representation in the Legislative Assembly until the dissolution of the then existing Assembly.

Section 48 of the Constitution relates to the area included in Pakistan. It lays down that until the area of the State under the control of Pakistan ceases to be so occupied and the people residing in that part area elect their representations :—

(a) Twenty five seats in the Legislative Assembly shall remain vacant and shall not be taken into account for reckoning the total membership of the Assembly ; and

(b) the said area shall be excluded in delimiting the territorial constituencies under Section 47.

The Coustitution under Section 49 provides that the seats be reserved for Scheduled Castes. It declares that a number of seats in the State Legislative Assembly be reserved for the Scheduled Castes, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes bears to the population of the State. While defining the Scheduled Castes it says that it has the same meaning and definition as provided in the Constitution of India in relation to the State under the provisions of Article 341 of that Constitution. These provisions relating to the Scheduled Castes cease to have any effect on the expiration of a period of twenty three years from the commencement of this Constitution under the Constitution of Jammu and Kashmir (Eleventh Amendment) Act, 1970.

The upper house of the Jammu and Kashmir legislature is named the Legislative Council. Under the Indian constitutional framework, few federating units have second chambers—most of the States abolished them or did not have them. The Legislative Council, however, consists of thirty six members, chosen in the manner as provided in Section 50 of the Constitution. Regarding its membership, eleven members are elected by the members of the Legislative Assembly from amongst persons so elected, at least one should be a resident of District Leh and at least one to be the resident of District Kargil. Eleven members are elected by the members of the Legislative Assembly from amongst persons who are residents of Jammu and are not members of the Legislative Assembly. These elected members should at least represent one member from Doda District and another resident of Poonch. One member is elected by each of the following electorates, namely :—

(a) the members of Municipal Council, Town Area Committees and Notified Area Committees in the province of Kashmir ;

(b) the members of Municipal Council, Town Area Committees and Notified Area Committees in the Province of Jammu ;

Two members are elected by each of the following electorates namely :—

(a) the members of the Panchayat and such other local bodies in the Province of Kashmir as the Governor may by order specify ;

(b) the members of the Panchayats and such other local bodies in the province of Jammu as the Governor may by order specify.

Further eight members are nominated by the Governor, not more than three of whom are persons belonging to any of the socially or economically backward classes in the State, and the others be persons having special knowledge or

practical experience in respect of matters such as literature, science, art, cooperative movement and social service. Eleven members from Kashmir and Jammu Divisions are held in accordance with the system of proportional representation of the single transferable vote.

The qualifications for membership of the legislature are determined by Section 51 of the Constitution. According to it a person is not qualified to be chosen to fill a seat in the legislature unless he :—

(a) is a permanent resident of the State, and makes and subscribes before some person authorized in that behalf by the Election Commission of India an oath or affirmation according to the form set out for the purpose in the Fifth Schedule of the Constitution ;

(b) is, in the case of a seat in the Legislative Assembly, not less than twenty five years of age, and in the case of a seat in the Legislative Council, not less than thirty years of age ; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by the legislature.

The Legislature Assembly, unless sooner dissolved, continues to be for a term of five years from the date appointed for its first meeting and no longer, and the expiration of the said period of five years operates as a dissolution of the Assembly. This period, however, is extendable by the State Legislature by law, for a period not exceeding one year at a time, while a proclamation of Emergency is issued under Article 352 of the Constitution of India. The duration was extended in 1975 under such a proclamation and the period was extended by one year. The present legislature is still to decide whether the duration remains five years or six years. The present politics reveals that the duration may continue to six years and consequently new elections may take place in 1983 instead of 1982. The Legislative Council is not subject to dissolution but as

nearly as possible one-third of the members thereof shall retire, as soon as may be, on the expiration of every second year in accordance with the provisions made in that behalf by legislature by law.

Immediately after the elections to the legislature, the Legislative Assembly in its first meeting chooses two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly chooses another member, to be Speaker of Deputy Speaker, as the case may be. The Speaker and the Deputy Speaker may vacate their seats or be removed as the case may be, if he ceases to be a member of the Assembly. They may resign under their hand addressed if such member is a Speaker to the Deputy Speaker, and if such member is the Deputy Speaker to the Speaker. The Officers may also be removed from their offices by a resolution of the Assembly passed by a majority of all the then members of the Assembly. Such a case occurred in 1980 when the Speaker, Mr. Mohi-ud-din Malik, was removed by the Assembly on account of his differences with the National Conference. Mr. Malik, however, moved the Supreme Court to that effect but the Court only arrived at a compromise formula. The office of the Speaker in the State till this case was never subjected to politics. However, fourteen days' notice to the Speaker is given conveying to him the intention to move the resolution. The Deputy Speaker or any other person of the Assembly has a power to perform the duties of the office of or to act as Speaker, if it is caused vacant by virtue of death, resignation or removal. During the absence of the Speaker from any sitting of the Assembly the Deputy Speaker or, if he is also absent, such a person as may be determined by the rules of procedure of the Assembly, or if no such person is present, such other person as may be determined by the Assembly, shall act as the Speaker. However, the Speaker or the Deputy Speaker shall not preside while a resolution for his removal from office is under consideration. The Speaker has a right to speak in, and otherwise to take

part, in the proceedings of the Legislative Assembly while any resolution for his removal from office is under consideration in the Assembly and shall, notwithstanding anything in Section 67, be entitled to vote only in the first instance on such a resolution or on any other matter during such proceedings but not in the case of an equality of votes.

The Legislative Council, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman theroof. Whenever, the office of the Chairman or Deputy Chairman falls vacant on any account, the Council chooses another member to occupy the place. The same procedure is adopted by the Constitution about the Chairman and Deputy Chairman as far the Speaker and the Deputy Speaker of the Legislative Assembly with regard to vacation and resignation of, and removal from the offices of the Chairman and Deputy Chairman. The salaries and allowances of the Speaker, Deputy Speaker, Chairman and Deputy Chairman are as may be respectively fixed by legislature by law from time to time. Both the houses of legislature have a separate secretariat staff.

The conduct of business in the legislature starts with the oath or affirmation by members before each takes his seat. Same as otherwise provided by the rules of procedure of the House the quorum to constitute a meeting of the Legislative Assembly and of the Legislative Council is twenty and ten respectively. A house of the Legislative Assembly has power to act notwithstanding any vacancy in the membership thereof and any proceedings in the legislature are valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings. All questions at any sitting of a house of the Legislature are determined by a majority of votes of the members present and voting, other than the Speaker or Chairman or person acting as such. The Speaker, or Chairman or a person acting as such, shall not vote in the first instance but shall have and exercise a casting vote in the case of equality of votes.

No person can be a member of both the houses of legislature at the same time. If one gets a seat in both, he or she has to resign from one or vacate the seat in accordance with the law. If a member of a house of the legislature resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant. A member's seat may also be declared vacant if he absents himself in the legislature for a period of sixty days without any permission. However, the days shall not include such absence as may be caused by reasons beyond his control or any period during which the House is prorogued or is adjourned for more than four consecutive days. A person is disqualified for being chosen and for being a member of the Legislative Assembly or the Council, if he holds any office of profit under the Government of India or the State Government or any other State Government within the Union of India, other than an Office declared by legislature by law not to disqualify its holder. A member is disqualified on the ground of being of unsound mind and stands so declared by a competent court. If a member is an undischarged insolvent and if he is not a permanent resident of the State or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance of adherence to a foreign State, is liable for disqualification. A member may also be disqualified by or under any law made by the legislature.

Ministers are not deemed to hold an office of profit under the Government of India, the State Government or any other State Government within the Union of India. Consequently, to be a Minister is no disqualification. In case of dispute with regard to the disqualification of a member, the case is to be referred to the High Court of Jammu and Kashmir for decision and its decision is final. In case the disqualification in question arises from circumstances which subsisted at the time of his being chosen as such member, no such representation as aforesaid shall be entertained :—

(a) unless it is made after the expiration of the period prescribed by law for presenting an election petition calling in question the election of the member ; and

(b) if such an election petition is pending or has been tried unless the Speaker or Chairman, as the case may be, is satisfied that the question of the member's disqualification by reason of those circumstances has not been raised or, as the case may be, was not raised, in the proceedings on the election petition.

In case a person as member sits and votes before making oath or affirmation when not qualified, he is liable to pay a penalty of one hundred rupees to be recovered as a debt due to the State.

The members of both the houses of legislature enjoy certain powers, privileges and immunities. Subject to the provisions of the Constitution and to the rules and standing orders regarding the procedure of the legislature, there is freedom of speech in the legislature. No member of the legislature is liable to any proceedings in any court in respect of anything said or any vote given by him in the legislature or any Committee thereof and no person is liable in respect of the publication by or under the authority of a House of legislature of any report, paper, votes or proceedings. In other respects, the powers and immunities of a house of the legislature and of the members and the committees of a house of legislature are such as may from time to time be determined by the legislature by law, and until so defined shall be those of the Parliament of India and of its members and Committees. Members of the Legislative Assembly and the Legislative Council are entitled to receive such salaries and allowances as may from time to time be determined by the legislature by law and until provision in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Constituent Assembly. However, these salaries have by now been defined or fixed by the law of the legislature.

The Constitution of Jammu and Kashmir provides a procedure for making laws by the legislature. It lays down that subject to the provisions of Sections 75 and 76 a bill is not deemed to have been passed by the legislature unless it has been agreed to by both the Houses, either without amendment or with such amendments only as are agreed to by both the Houses. A bill pending in the legislature does not lapse on a dissolution of the Assembly. The Upper Hause (Legislative Council) has restricted powers and jurisdiction as compared to the lower house. The Cconstitution provides that if after a bill has been passed by the Legislative Assembly and transmitted to the Legislative Council :—

(a) the Bill is rejected by the Council ; or

(b) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it ; or

(c) the Bill is laid passed by the Council with amendments to which the Legislative Assembly does not agree.

the Legislative Assembly may, subject to the rules regulating its procedure, pass the bill again in the same or in any subsequent session with or without such amendments, if any, as have been made, suggested or agreed to by the Legislative Council. If after a bill has been passed for the second time by the Legislative Assembly and transmitted to the Legislative Council :—

(a) the bill is rejected by the Council

(b) more than one month elapses from the date on which the bill is laid before the Council without the bill being passed by it, or

(c) the bill is passed by the Council with amendments to which the Legislative Assembly does not agree,

the bill is deemed to have been passed by both the houses of the legislature in the form in which it was passed by the Legislative Assembly for the second time with such amendments, if any, as were made or suggested by the Legislative

Council and agree to by the Legislative Assembly. However, it does not apply to money bills.

There are separate provisions for money bills. There is a special procedure in respect of money bills and it is laid in it that such a bill cannot be introduced in the Legislative Council. After a money bill is passed by the Legislative Assembly, it is transmitted to the Legislative Council for consideration within fourteen days. Within the prescribed period the Council may return the bill to the lower house with its recommendations. The Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council. If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the money bill is deemed to have been passed by both the houses by the Legislative Assembly without any of the amendments suggested by the Legislative Council. If a money bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of fourteen days, it shall be deemed to have been passed by both the houses at the expiry of the said period in the form in which it was passed by the Legislative Assembly.

The Constitution further defines the money bills and it lays down that a bill is deemed to be a money bill if it cortains only provisions dealing with all or any of the following matters, namely :—

(a) the imposition, abolition, remission, alteration or regulation of any tax ;

(b) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken by the State ;

(c) the custody of the consolidated fund or the contingency fund of the State, the payment of moneys into or withdrawal of moneys from any such fund ;

(d) the appropriation of moneys out of the consolidated fund of the State ;

(e) the declaring of any expenditure to be expenditure charged on the consolidated fund of the State or the increasing to the amount of any such expenditure ;

(f) the receipt of money on account of the consolidated fund of the State or the public account of the State or the custody or issue of such money ; or

(g) any matter incidential to any of the matters specified in Clauses (a) to (f) (enumerated above) of Section 77 of the Jammu and Kashmir Constitution.

A bill is not deemed to be a money bill by reason only that it provides for the imposition of fines or other pecuniary penalities, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes. In case of a question whether a bill introduced is money or non-money bill, the Speaker is empowered to give a decision and that decision is final. The Speaker has also to sign and certify a bill to be a money bill when it is submitted to the Governor for final assent. When a bill is passed by both the houses of the legislature, it is presented to the Governor for assent. He may assent to it or withhold it. The Governor has the power, either through message or otherwise to return a bill for reconsideration of the house. If his request is not agreed to by the legislature and the latter returns the bill without any change, the Governor has no constitutional remedy but to assent to it on its second presentation.

The Constitution also provides a procedure in financial matters and lays down that the Governor, is respect of every financial year cause to be laid before both Houses of the Legislature a statement of the estimated receipts and expenditure of the State for that year—which is referred as the "Annual Financial Statement". The estimate of

expenditure embodied in the annual financial statement has to show separately :—

(a) the sums required to meet expenditure described by the Constitution as expenditure charged upon the Consolidated Fund of the State ; and

(b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of the State.

It distinguishes expenditure on revenue account from other expenditure. The following expenditure is considered to be expenditure charged on the Consolidated Fund of the State :—

(a) the emoluments and allowances of the Governor and other expenditure relating to his office ;

(b) the salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly ;

(c) debt charges for which the State is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of the loans and the service and redemption of debt ;

(d) expenditure in respect of the salaries and allowances of the judges of the High Court ;

(e) any sums required to satisfiy any judgement, decree or award of any court or arbitral tribunal ;

(f) any other expenditure declared by the Constitution of Jammu and Kashmir or by legislature by law, to be so charged. So much of the estimates as relate to expenditure charged upon the Consolidated Fund of the State is not submitted to the vote of Legislative Assembly but the Assembly is not prevetned from a discussion on it. However, so much of said estimates as relate to other expenditure is submitted in the form of demands for grants to the Legislative Assembly and it has the power to assent to any demands subject to a reduction of the amount

specified therein. Constitutionally, no demand for grant is made except on the recommendations of the Governor.

As soon as the grants are made by the Legislative Assembly, a bill to provide for the appropriation out of the Consolidated Fund of the State of all moneys is introduced to meet :—

(a) the grants so made by the Assembly ; and
(b) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the statement previously laid before the Houses.

No amendment however, to any bill in either House of Legislature which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the State and the decision of the person so presiding as to whether an amendment is admissible or not is final. No money, conseqnently, is withdraw from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the Constitution. If the Annual Financial Statement is not sufficient in case of any service or department, the Governor can place demands for supplementary, additional or excess grants. Pending the completion of the procedure for the financial settlement, advance grants can be voted by the legislature under Section 83 of the Constitution. Such advances may include unexpected demands upon the resources of the State.

The Constitution provides certain general rules with regard to the State Legislature. It lays down that it has power to made rules for regulating its procedure and the conduct of its business subject to the provisions of the Constitution. The Governor, after consultation with the Speaker of the Assembly and the Chairman of the Council, can make rules as to the procedure with respect to communications between

the two houses. The transaction of the legislature is conducted in Urdu or English, but the Speaker and the Chairman of the Assembly and the Council respectively can permit a member to speak in Hindi or in his mother tongue. The official records are maintained in English and Urdu—but all the bills and Acts are documented in English. The members have no right to discuss the conduct of any judge of the High Court or Supreme Court of India. The validity of any proceedings in the legislature is not called in question on the grounds of any alleged irregularity of procedure. Nor is any officer held responsible if he had the power to regulate procedure or the conduct of business. No law is declared invalid if assented to by the Governor on the basis that some recommendation required by the Constitution was not given.

The Constitution of the State creates a High Court as the highest court in the State. It consists of five judges including the Chief Justice of the Court. The High Court has jurisdiction over the whole of the State of Jammu and Kashmir. It is a Court of record and has all the powers of such a court including the power to punish for contempt of itself or of the courts subordinate to it. The Chief Justice of the Court is appointed by the President of India by warrant under his hand and seal, after consulting the Chief Justice of India—and the Governor of the State. In case of the appointment of other judges of the High Court the President of India consults not only the Chief Justice of India and the Governor but also the Chief Justice of that State. Additional Judges also are liable to be appointed in case the President is satisfied that the work or arrears of work demands it. Presently, Justice Bahauddin Farooq's appointment as permanent Chief Justice of Jammu and Kashmir has become a matter of controversy between the government of India and Jammu and Kashmir. The present indications are that the State Government will not politicise this appointment.

No person is qualified to be appointed as the Judge of the High Court unless he is citizen of India, and

(a) has for at least ten years held a judicial office in the

State or in any other part of India.

(b) has for at least ten years been an advocate of the State High Court or any other High Court in India or of two or more such courts in succession.

Every person appointed to be a Judge of the High Court is, before he enters upon his office, to make and subscribe before the Governor or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Fifth Schedule of the Constitution. The salary of the judges is specified in the Fourth Schedule. The Chief Justice according to the Schedule is paid Rs. 4,000/- and other judges of the High Court a sum of Rs. 3,500/- each per month. The rights of the judges in respect of leave of absence, including leave allowance, pension and other conditions of service of the Judges of the High Court are governed by the provisions of the Hlgh Court Judges (Conditions of Service) Act, 1954 (Central Act No. 28 of 1954). The Chief Justice of the High Court, with the approval of the Governor determines the number of judges who sit from time to time at Jammu and at Srinagar for such period as may be deemed necessary.

The Court has power to issue any person or authority directions, orders or writs, including the writs in the nature of habeas corpus, mandemus, prohibition, quo-warranto and ceretiorare, or any of them, for any purpose other than those mentioned in clause (2-A) of Article 32 of the Consrition of India. The High Court has the power of superintendence and control over all courts subject to its appellate or revisional jurisdiction on all subordinate courts. The Court may call for returns from all courts subordinate to it. It makes and issues general rules and prescribes forms for regulating the practice and proceedings of such courts. It also prescribes forms in which books, entries and accounts are kept by the officers of any such courts. It settles tables of fees to be allowed to the Sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practizing therein. If the High Court is satisfied

that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation to this Constitution or the Constitution of India the determination of which is necessary for the disposal of the case, it may :—

(a) either dispose of the case itself, or

(b) determine the said question of law and return the case to the court which the case has been so withdrawn together with a copy of its judgement on such question and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgement. The High Court uses a seal bearing a device and impression of the State emblem with an exergue or lable surrounding the same with the inscription ; "The seal of the High Conrt of J & K".

The Seal remains under the custody of the Registrar of the High Court of Jammu and Kashmir. Appointment of officers and servants of the High Court is made by the Chief Justice of the High Court or such other judge or officer of the court as he may direct. Appointment of persons to be, and the posting and promotion of, district judges in the State is made by the Governor in consultation with the High Court. Appointments of persons other than district judges to the judicial service of the State is made by the Governor in accordance with the rules made by him in that behalf after consultation with the Public Service Commission and with the High Court. These rules relate to the K.C.S. (Judicial) and recruitment to the service is made through a competitive examination of given pleaders having at least two years experience as practitioners. The High Court has control over subordinate courts, including the posting and promotion of and the grant of leave and pensions to the members belonging to the Judicial service of the State.

Part VIII of the C onstitution deals with finance, property and contracts. It promises in the outset that no tax shall be levied or collected except by authority of law. All revenues received by the government and all loans raised by issuing of

treasury bills, loans or ways and means, advances and all moneys received by the Government in repayment of loans forms are Consolidated Fund to be entitled "The Consolidated Fund of the State."

All public moneys received by or on behalf of the government are credited to the public account of the State. No moneys out of the Consolidated Fund of the State are appropriated except in accordance with law and for the purposes and in the manner provided in the Constitution of Jammu and Kashmir. The legislature is empowered under law to establish a contingency fund, into which shall be paid from time to time such sums as may be determined by such law. The government has power to make any grants for any public purposes, notwithstanding that the purpose is not one with respect to which the legislature can make a law. The Governor, until the law is passed by the legislature, and since the operation of the Constitution some laws were framed, has the power to protect and keep in custody ail the moneys of the Consolidated Fund, Contingency Fund and other public money of the State. All moneys received by or deposited with :—

(a) any officer employed in connection with the affairs of the State in his capacity as such other than revenue or public moneys raised or received by the government, or

(b) any court within the State to the credit of any cause, matter, account or persons are to be paid into the public account of the State. With regard to property it is laid down that any property within the State accures to the State of Jammu and Kashmir as "bona vacanta" for want of a rightful owner. All contracts made in the exercise of the executive power of the State are expressed to be made by the Governor and all such contracts and all assurances of property made in the exercise of that power are to be executed on behalf of the Governor by such persons and in such manner as he may direct or authorize.

Part X of the Constitution of the State relates to the provisions about the elections in the State. It lays down that the superintendence, direction and control of the preparation of the electoral rolls, for, and the conduct of elections to be vested in the Election Commission of India. It provides that no person can be declared ineligible for inclusion in electoral roll on grounds of religion, race, caste or sex and declares that elections are to be held on the basis of adult franchise. The legislatuer, however, has power to make provisions with respect to elections to the legislature.

Finally, the amendment of the Constitution is dealt with in Part XII of the Constitution. It is initiated through introduction of a bill for the purpose in the Legislative Assembly, and when the bill is passed in each House by a majority of not less than two thirds of the total membership of that House, it shall be presented to the Governor for his absent, upon such assent being given to the bill, the Constitution shall stand amended in accordance with the terms of the bill. However, neither Section 147 nor Section 3 and 5 or the provisions of the Constitution of India are applicable in relation to the State. The section 147 relates to the procedure of amendment itself and sections 3 and 5 deal with relationship of the State with the Union of India and the extent of executive and legislative power of the State except those with respect to which Parliament has power to make laws for the State under the provisions of the Constituiion of India respectively.

The constitutional framework thus defines and regulates not only the relations between the State and the Indian Union but also frames rules for the governance of the State. Since 1951 to the conclusion of the Accord between the Sheikh and Mrs. Indira Gandhi in 1975 a constitutional tussel continued. However, in the tussel the State conceded more than it had retained by 1953. The Constitutional relationship between the Union of India and the State has been very intricate. Consequently, since the accession many problems arose in administering the State both from

Srinagar and form Delhi. For example, the Constitution of Jammu and Kashmir provided that the permanent residents of the State shall have all the rights guaranteed to them under the Constitution of India but their operationalization was very complicated. Consequently, Part III of the Constitution of India dealing with Fundamental Rights as applied in relation to the State, with modifications and exceptions subject to which it applies, by the Constitution under Order, C. O. 48 dated 14th March, 1969 was concluded. The freedoms are guaranteed under the orders as applicable to Jammu and Kashmir as :—

(a) Right to Equality—This Article of the Indian Constitution as applicable to the State includes equality before law, prohibition of discrimination on grounds of religion, race, caste, and place of birth, equality of opportunity in matters of public employment, abolition of untouchability and abolition of titles.

(b) Right to Freedom—includes
   1. Freedom of speech and expression
   2. Assembly peaceably and without arms
   3. to form associations or Unions
   4. to move freely throughout the territory of India
   5. to reside and settle in any part of the territory of India
   6. to acquire, hold and dispose of property and
   7. practize any profession, or to carry on any occupation, trade for business.

Further, the fundamental rights as applicable to the citizens of the State of Jammu and Kashmir include :—

a. Right to Freedom of Religion
b. Cultural and Educational Rights
c. Right to Property
d. Right to Constitutional Remedies.

CHAPTER VII

Political Epilogue

If the new rules of the State in 1947 received a legacy of Kashmir political sociology, administrative set up and some kind of constitutional framework, they also carried over from their immediate past, their experience of the freedom struggle initiated in 1931. Assuredly, their sincerity while struggling against the Dogra rule as part of the National movement in India is undoubted and undisputed. But as soon as they took over as rulers, the struggle for power ensued. Politics may be said to be, in addition to many other things, struggle for power, but unlike the freedom struggle it results into disunity. As we have examined in the eventful decades, it was the 1953 episode which was the beginning of the substantive and constitutional change which was later confirmed in 1975 under the Accord between Mrs. Indira Gandhi and Sheikh Mohammad Abdullah. The two decades during which the Sheikh remained out of power, has shown that the people, by and large, have no definite goals and objectives in politics. When Mirza Mohammad Afzal Beg was asked in the legislature about these two decades of negative politics he called it "Political Vagabondism". The total political outcome of it was that the loss in 1953 by the National Conference was affirmed in 1975 through the Accord.

The political attitudes and behaviours of the Kashmir leadership and the people in general represent the age old

position of the Kashmiri National spirit of self-existence and self-identification. The Kashmir culture, its traditions, customs, laws, social interactions, beliefs and the compact social system reveal that under the snow-clab mountains, this society on earth has in the past been so suppressed that the common man has learnt only how to exist. His folk songs, idioms, theatre, dress, diet and attitudes point out their anxiety for mere survival, whether *individual* or collective. Consequently, the politics since 1947 has proved the theory that for his existence a Kashmiri can adhere to any politics which gives him peace and stability and which *in* terms of Catlin is the objectives of politics. In this sense, the people of Jammu and Kashmir have a commitment and those who think otherwise have not understood the spirit of Kashmir as a *nation*. In the 1965 conflict between the Indian and Pakistan Governments, the infliterators in Kashmir were handed-over to the police reflected the sentiment.

The leadership of the National Conference ensured as early as 1947 that they alone could stand for secularism. socialism and democracy. As soon, however, as they were in power, they derailed and acted as dictatorially as it could be possible for them. Actually, even the radio sets were removed to police stations from families who dissented with the National Conference. During the period from 1947-1953, they had been assuring the people inside and outside the State that they alone could resolve the conflict between the forces of reaction and progress. But they *failed* and instead fell out with the Centre on one or the other issues. Some believed that the leadership of the Centre and the State fell out on account of constitutional relations and some others held it to be a crisis of conscience. Whatever the case, the struggle for power ensued.

Leadership usually endows its actions with legitimacy and the Sheikh tried to justify the action as the Prime Minister uptil 1953. On the 7th August 1953, he said that if the accession was dissolved, the responsibility would be wholly of the Indian Communalists who by demanding a complete

merger with India had "Shaken the foundations of Indo-Kashmir relationship." Earlier he justified accession to India on the basis of principles like socialism, secularism and democracy. Consequently, the Indian press and government condemned the National Conference on having second thoughts. Thus the people of India and the Government, under the leadership of Nehru, thought the Sheikh was betraying and the Sheikh and his government considered Delhi retreating from their commitment.

By 1948, the Sheikh and his National Conference had become influential and soon after they had converted this influence into authority giving it a legitimacy by inaugurating the Constituent Assembly for drafting a Constitution for the State of Jammu and Kashmir. This did happen but the fall of the Sheikh led to two theories. Firstly, whether the Sheikh's arrest was constitutional and moral and second whether the Contituent Assembly was legally and morally constituted both on grounds of uncontested elections and on the ground of his removal.

The Constituent Assembly and its Constitution made Jammu and Kashmir an independent sub-system in the entire Indian political system. The State of Jammu and Kashmir is the only State having its own Constitution as compared to any other unit of Indian federal polity. Accepting that this Constitution is entirely subservient to the Indian Constitution, both by reason of Article 370 of the Indian Constitution and the different Sections as provided in the Constitution of Jammu and Kashmir, the preamble of the Constitution declares Jammu and Kashmir State as the integral part of Indian Union and Section 3 gives it a legal sanction.

Immediately after the accession of the State to the Union of India, neither the socialist group of the National Conference remained socialist nor others remained ideologically committed. Instead, most of them became opportunists. The National Conference split in 1953 removed the myth of the unity of the Conference and the people of Jammu and

Kashmir. By 1953, the freedom fighters had relatively acquired at least minimum proficiency in the skills of power. Consequently, Bakhshi Ghulam Mohammad, placing high value on gaining power, could acquire it and had the capacity to retain it for a decade. His capacity as administrator is undeniable and undisputed. Bakhshi had the understanding of the Kashmir mind. He undid in politics what the Sheikh had probably planned to do. The two approaches differed in so far as their attitude to the politics of Jammu and Kashmir was concerned. Bakhshi thought the political issues to have been settled and the Sheikh had relatively high confidence that he could gain power and settle what he called the Kashmir dispute. The Sheikh did gain power in 1977, with a full mandate from the majority of the people in the State of Jammu and Kashmir but this power by then had been polluted by M/s Bakhshi, Shamasuddin, Sadiq, and Mir. Qasim.

Mr. Shamasuddin and Syed Mir Qasim were transitory Chief Ministers for the State, for they had neither the charisma nor any outstanding achievement. Mr. Ghulam Mohammad Sadiq nourished his political acuemen on two grounds. Firstly, he had played an important role in the freedom struggle and secondly he espoused an ideology more than other leaders in the entire leadership of the National Conference. The unfortunate part of the power struggle in the State has been that every leader has a stigma attached to him. Those of the freedom fighters, who lived without stigma, had either to die unheard and unwept or had to go into an oblivion without being known to the people or in history. History may discover them in future but presently they are undiscovered. Mrs. Ghulam Mohammad Sadiq, while resigning from the government and the National Conference, rejoined again with Bakhshi Sahib on the justification of strengthening the progressive elements in power, though he considered the former a reactionary. The politics of the State have proved beyond doubt, since 1953, that most of the National Conference elite had developed the tendency to seek power intently than others outside the

organization excluding Jammu Province.

Every society in its all intents and purposes tries to create a stable and lasting peace. Kashmiries by virtue of the clusters of opinions, attitudes and beliefs developed in history, belong to "Docile Islam" as against Janeson's "Militant Islam". People are more interested in compromise both political and otherwise than in any cleavages that might arise. Whatever the reasons, more Muslims are found in shrines than the Mosques. This is not a phenomena peculiar to Kashmir society alone. Muslims in other parts of India adhere to the same practice, as at Khanaqahi Chisti in Ajmer, yet its bearing on politics in Kashmir is very peculiar. The leadership of the National Conference emerged in shrines in Kashmir like those at Khanqahi-Mualla, Dastgeer's shrine in Khanyar and the shrine at Hazratbal. These shrines were training grounds for the leadership whether in the pre-1947 or post-1947. Though there has never been Islamization of politics in Kashmir, yet many a time Islam has been politicized for purposes of exploitation. Bakhshi Ghulam Mohammad renovated the Khakahi-Mualla, Dastgir Sahib and Mukhdom Sahib shrines during his regime. The Sheikh renovated the Durgah at Hazratbal in his own style and manner. This could not happen ordinarily until the leadership had the hold of the religion at his command. Pandits in Kashmir have a similar tendency as their ideas and movements have emerged only in temples at Habbakadal and at Sathu.

Most of the leadership of the National Conference, right from 1931, emerged out of the families which had lack of respect and affection. The self, then, in terms of Lasswel and Dahl, suffered damage and consequently the individuals acquired a low estimate of the self. The National Conference leadership, estimating themselves so in their dispositions, revolted to demand power for the self, which is the primary ego plus incorporated symbols of other egos. The Constitutional conflict between the Centre and the National Conference was nothing but the conflict of these egos from

time to time since 1947. The recover the respect and affection the leadership had to change the nomenclature of their organization from time to time. The Muslim Conference was converted to the National Conference and after its grand split in 1953, Plebiscite Front was the outcome of the collective egos. The Plebiscite Front was converted back to the National Conference before the assumption of power in 1975.

The politics in the State, after the fall of Dacca in 1971, entered a new phase of mental uncertainty of the Kashmiris. The leadership, accordingly, shifted from the position of a plebiscite to the acceptance of the status-quo. The literature of the Plebiscite Front and later the National Conference questions ; One, "Why to hold the Plebiscite ?" and the other, "Why to abandon the right of self-determination ?" Assuredly, the minds of the people were placed under further confusion by two events. Firstly, the emergence of Bangla Desh and the other the shift, without going to the merits, in the commitment of the leadership. It reveals that people were frustrated and became apathetic to politics. The results of the elections of 1977 may be presented as a proof against this contention. It may be stated in rebuttal that the elections in 1977 revealed the sentiments that Kashmir having no alternative to the leadership of the National Conference and that Kashmiris having lost the battle of politics revert to parochial interests rather than anything else. Balrajpuri asserts rightly that since 1931 Kashmiris have been seeking self-identification and consequently, the elections reflected the urge for identification rather than the political goals which the society had set out for them. The leadership in Delhi must realize that the sentiment is not isolated in relation to Kashmiris only—it is true of Punjabis, Assamese, Bengalis and many others.

The unfortunate aspect in Kashmir politics is that the forces of secularism, socialism and democracy have nothing to do with the common man. These forces have neither educated the common man for these concepts nor were there

any attempts to operationalize these concepts during the last three decades. These concepts were only used as instruments in the hands of the leadership for paving the way to accession to India during the freedom struggle and in the post-1947 these concepts are used as means to seek power.

The civil administration lost its traditional morality through its wrong recruitment policy and inservice promotions, consternation of official morality, political interferences, corruption and inefficiency. Today bureaucracy and the entire administration is a burden on the society. In the State the bureaucracy has developed its position to make political amatures subservient to it and, consequently, it has secured a hegemony about whom Marlowe said :

> "The Emperor shall not live but by my leave,
> Nor any potenate of Germany,
> Now that I have obtan'd what I desire."

Thus bureaucracy and administration has also disillusioned the people.

The political culture of Kashmir is the consequence of a three pronged attack on politics emanating from Delhi, Rawalpindi and the ruling elite in Kashmir. In this three pronged attack all the three parties stand discredited during the last three decades. Delhi is discredited on the scores of betrayal to their own commitment on plebiscite and their betrayal of democracy in Kashmir. The common man in Kashmir has no problems on account of communalism and capitalism. For, by and large, communalism has no roots in the soil nor has any serious capitalism been devouring our economy, though in the recent years some sort of commercial and orchardist capitalism has grown. Consequently, the population looks very seriously at the working of democracy, and its operation in Kashmir. Their resentment is genuine as they never heard of a fair election uptil 1977. The parochial political behaviour in 1977 elections, was a reaction to what had happened in the last

three decades. During last two and a half decades, Delhi tried to project Kashmir as a legally settled issue, without understanding the politics of its legality. To determine the constitutional relationship is one thing and to satisfy the electorate is still another position. The Governments in Delhi operated in Kashmir through its administrative channels and its political leadership laison. In its administrative channels the C.I.B. is one of the agencies that worked for it and through its political leadership laison mostly opportunists were created. For example, who interested in hiding the facts of the theft of the sacred relic and why ? If the theft was politically motivated only three parties could be involved. Pakistan, Delhi and one or the other political parties from Kashmir. Delhi could not be interested in saving Pakistan if she was involved. Consequently, Delhi is discredited on account of secrecy maintained in relation to the theft of the sacred relic.

Pakistan is discredited on many scores in relation to Kashmir. Firstly, from the very inception, Pakistan could not form any Constitutional Government and when a constitutional government under 1956 Constitution was framed it had to be abrogated by a military dictatorship under Ayub Khan. No national consensus could emerge in Pakistan right from the beginning which could solve her National problems. When another Constitution was tried after the emergence of Bangla Desh, it was deformed through amendments with the execution of Zulficar Ali Bhutto, one of the intelligent leaders Asia had produced. The execution of Bhutto had the devastating effect on Pakistan's image in Kashmir. In fact, it reflected through the spontaneous outburst on 4th, 5th and 6th April, 1979, witnessed in the Muslim areas of the State of Jammu and Kashmir. The emergence of Bangla Desh itself had cut Pakistan to her size. Pakistan's politics lost for her more than it gained during last three decades. Army dictatorship is no alternative to democracy or even to Aristocracy. Late Mr. Jinnah, Qaid-i-Azam, the great leader and founder of Pakistan himself in his address to the nation had declared Pakistan to

be a secular State but later the establishment of Islamic State has come to be the instrument of seeking power. Pakistan's military pacts made Pakistan to loose more than it gained. Their politics with regard to Kashmir failed every time, brining no fruit for the settlement of the dispute. The impact of all such performances made Krshmiris to rethink on their politics.

In its political substratums of the State the Kashmiris had dreams of hope, security and socio-economic justice and the like. In its political sociology it transcended its social goals and objectives, having a humanistic nature but due to eventful decades and administrative designs non of the dreams could be nurtured. The political pulls and pressures vitiated all the hopes and constitutional framework made them to loose more than it could gain. As a result the Kashmiri sub-nationalism has had to go back to its innerself. As true of an individual that once he is betrayed in his outerself, he moves back to his inner-self, so is it true that every nation in her outer-self politics (Political Environment) moves back to her inner-self (Parochial Politics) and tries to live. Thus owing to the political confusion in their minds the Kashmiris now try to live within their own body-politic. He (Kashmiri) has a tendency to go back to Nunda Rushi and Lalla Ded—this is nothing but political alienation.

STATE SUBJECT DEFINITION

Notification dated the 20th April, 1927

*No. I. L. 84—The following definition of the term "State Subject" has been sanctioned by His Highness the Maharaja Bahadur (vide Private Secretary's letter No. 2354, dated the 31st January, 1927 to the Revenue Member of Council) and is hereby promulgated for general information.

The term State Subject means and includes —

Class I—All persons born and residing within the State before the commencement of the reign of His Highness the late Maharaja Ghulab Singh Sahib Bahadur, and also persons who settled therein before the commencement of Samvat year 1942, and have since been permanently residing therein.

Class II—All persons other than those belonging to Class I who settle within the State before the close of Samvat year 1968, and have since permanently resided and acquired immovable property therein.

Class III—All persons, other than those belonging to Classes I and II per manently residing within the State, who have acquired under a *rayatnama* any immovable property therein or who may hereafter acquire such property under an *ijazatnama* and may execute a *rayytnama* after ten years continuous residence therein,

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*This Notification is to be read subject to the provisions of section 6 of the Constitution of Jammu and Kashmir.

*Class IV—Companies which have been registered as such within the State and which, being companies in which the Government are financially interested or as to the economic benefit to the State or to the financial stability of which the Government are satisfied, have by a special order of His Highness been declared to be State Subjects).

Note I—In matters of grants of the State scholarships, State lands for agricultural and house building purposes and recruitment to State service, State Subjects of Class I should receive preference over other classes and those of Class II, over Class III, subject, however, to the Order dated 31st January, 1927 of His Highness the Maharaja Bahadur regarding employment of hereditary State Subjects in Government service.

Note II—The descendants of the persons who have secured the status of any class of the State Subjects will be entitled to become the State Subject of the same class. For example, if A is declared a State Subject of Class II his sons and grandsons will *ipsofacto* acquire the status of the same Class (II) and not of Class I.

**(*Note III*—The wife of a widow of a State Subject of any class shall acquire the status of her husband as State Subject of the same Class as her husband, so long as she resides in the State and does not leave the State for permanent residence outside the State.)

*Class IV and Note IV added vide order No. 98-H/39, published in Government Gazette dated 27th Poh, 1966. By the same order His Highness is further pleased to direct that, notwithstanding any law, rule or other order to the contrary, no disability as regards acquisition of any interest in land or other immovable property in the State shall attach to a company which is a State Subject within the meaning of Notification No. 1-L/84 dated 20th April, 1927, as amended.

**Note III added vide Notification No. 51-L/1989 amended by Notification No. 6-L/1990 published in Government Gazette dated 8th Baisakhi, 1990 and Government Gazette dated the 23rd Bhadon, 1990 respectively.

***Note IV*—For the purposes of the interpretation of the term 'State Subject' either with reference to any law for the time being in force or otherwise, the definition given in this Notification as amended up to date shall be read as if such amended definition existed in the Notification as originally issued.

***See footnote under Class IV.

Appendix II

INSTRUMENT OF ACCESSION OF JAMMU AND KASHMIR STATE

The following is the text of the instrument of Accession executed by the Ruler of Jammu and Kashmir State on 26th October, 1947 :

Whereas, the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as India, and that the Government of India Act, 1935, shall, with such omissions, additions, adaptations and modifications as the Governor-General may be order specify, be applicable to the Dominion of India ;

And whereas the Government of India Act, 1935, as so adapted by the Governor-General provides that an Indian state may accede to the dominion of India by an instrument of Accession executed by the Ruler thereof ;

Now, therefore, I, Shriman Indar Mahandar Rajrajeshwar Maharajajadhiraj Shri Hari Singhji, J & K Varesh Tatha Tibbet adi Deshadhipathi, Ruler of J & K State, in the exercise of my sovereignty in and over my said state do hereby execute this my instrument of Accession and

1. I hereby declare that I accede to the Dominion of India, with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purpose of the Dominion shall, by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purpose only of the Dominion, exercise in relation to the State of Jammu and Kashmir (hereinafter referred to as 'this State')

such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India, on the 15th day of August 1947 (which Act as so in force is hereafter referred to as 'the Act').

2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

3. I accept the matters specified in the schedule hereto as the matters, with respect to which the Dominion Legislature may make laws for this state.

4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the ruler of this State whereby any function in relation to the administration in this state of any law of the Dominion Legislature shall be exercised by the Ruler of this State, then any such agreement shall be deemed to form part of this instrument and shall be construed and have effect accordingly.

5. The terms of this Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947, unless such amendment is accepted by me by an instrument supplementary to this instrument.

6. Nothing in this instrument shall empower the Dominion Legislature to make any law for this state authorizing the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purposes of a Dominion law which applies in this State deem it necessary to acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

7. Nothing in this instrument shall deem to commit me in any way to acceptance of any future Constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future Constitution.

8. Nothing in this instrument affects the continuance of my sovereignty in and over this state, or, save as provided by or under this instrument, the exercise of any power, authority and rights now enjoyed by me as ruler of this state or the validity of any law at present in force in this state.

9. I hereby declare that I execute this instrument on behalf of this State and that any references in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this 26th day of October, nineteen hundred and forty seven.

Sd/-
Hari Singh
Maharajadhiraj of J&K State

Appendix III

SUMMARY OF THE NEHRU ABDULLAH AGREEMENT MADE ON 24TH JULY 1952

1. Citizenship. A common citizenship was recognised with special privilege for State subjects.

2. The Head of the State to be recognised by the Indian President on the recommendation of the State Legislature. The State to decide the process of election of the Head of the State. Appointment to be for five years.

3. For historical and sentimental reasons, a State Flag to be recognised, but the Indian National Flag to continue to have the same status as elsewhere in India.

4. The President of India to retain powers to reprieve and commute death sentences.

5. The President of India to exercise his emergency powers under Art. 352 of the Indian Constitution, in such matters as invasion and external or Internal disturbances in Kashmir. But in the case of internal disturbances, action to be taken only with the concurrence of the State.

6. The application of principles of fundamental rights, as defined in the Indian Constitution, to apply in Kashmir subject to certain modifications. For example the Kashmir decision not to award compensation to dispossed landlords contrary to the Indian guarantee.

7. The Supreme Court of India to retain original jurisdiction in respect of disputes mentioned in Art. 131. Such disputes are those between State or between a State and the Government of India. The State Advisory Tribunal to be abolished and its functions are to pass to the Supreme Court of

India. This in effect made the Supreme Court the final court of appeal in all criminal and civil matters.

8. Financial agreement between India and Kashmir including the difficult question of customs had still to be worked out.

THE KASHMIR ACCORD

STATEMENT OF SMT. INDIRA GANDHI, PRIME MINISTER, IN PARLIAMENT ON JAMMU & KASHMIR ON FEBRUARY 24, 1975.

In pursuance of Government's policy to secure the active co-operation and involvement of all democratic, secular and progressive forces in the country it was considered desirable to have a dialogue with Sheikh Mohammad Abdullah. Hon'ble Members are aware that Sheikh Abdullah had played a notable part in the freedom struggle and in the accession of the State of Jammu and Kashmir to the Indian Union. He formed and headed the Government of the State for a number of years after independence. Despite the differences which led to the subsequent estrangement it seemed clear from the public statements made by Sheikh Abdullah as well as personal talks with him that his commitment to basic national ideals and objectives had remained unchanged. He reaffirmed that the accession of the State to the Indian Union was final and irrevocable. His main area of concern was about the legal and constitutional changes made after August, 1953.

It was decided that Mirza Afzal Beg, whom Sheikh Abdullah named for the purpose, and Shri G. Parthasarathi, whom I entrusted with the task, should examine these changes in depth and make appropriate recommendations. After extensive discussions they reached agreement on various points which are incorporated in the Agreed Conclusions, a copy of which is placed on the Table of the House. These conclusions formed the subject matter of further discussions at a political level in which Sheikh Abdullah, Syed Mir Qasim, the Chief Minister of the State, and Sardar Swaran Singh participated. As a result of these understanding has been reached as disclosed in the letters exchanged between me and Sheikh Abdullah, copies of which are placed on the Table. I shall refer to certain basic features of the understanding.

The Agreed Conclusions have been formulated within the

framework of the Constitution of India. The constitutional relations between the State of Jammu and Kashmir and the Union will continue as it has been and the extension of further provisions of the Constitution to the State will continue to be governed by the procedure prescribed in Article 370. There will be no weakening of the ties which exist between the Union of India and its constituent units of which the State of Jammu and Kashmir is one. The existing jurisdiction of the Centre to deal with activities directed towards questioning or disrupting the sovereignty and territorial integrity of India, or bringing about cession or secession of any part of the territory of India from the Union, will also continue. It has also been agreed that any amendment of the Constitution of the State on certain specified matters of importance will not become effective unless the assent of the President is obtained. The Agreed Conclusions seek to reassure the State that in case the State Government comes up with any proposal to change any Central law made after 1953 on matters in the Concurrent List, such as social welfare measures, cultural matters, social security, procedural laws and the like, the grant of assent to the Bill will be sympathetically considered.

A proposal was made by Mirza Afzal Beg that the jurisdiction of the Supreme Court in relation to the State should be curtailed. This was not accepted as it is considered important that the Supreme Court should continue to have its original and appellate jurisdiction in the matter of writs, appeals and other matters. However, it was agreed by collateral letters (copies of which are placed on the Table) that the provision in Article 132(2) enabling the Supreme Court to grant special leave on the refusal of a certificate by the High Court need not apply to the State. Action on this will, however, be taken only when the State Government comes up with a proposal in this behalf.

Hon'ble Members will notice that, the question of nomenclature of the Governor and the Chief Minister could not be settled. This is a matter which is provided for in the State

Constitution which at present used the expressions "Governor" and "Chief Minister". A change in the nomenclature can be made only by the amendment of the State Constitution by the State Legislature. So far as the Chief Minister is concerned, there should be no objection to the adoption of the designation 'Wazir-e-Azam' in the State if the Legislature of the State of Jammu and Kashmir amends its Constitution accordingly. Until this is done, the present designation would continue.

Sheikh Abdullah was very anxious that, to start with, the constitutional relationship between the State and the Centre should be as it was in 1953 when he was in power. It was explained to him that the clock could not be put back in this manner. Mirza Afzal Beg pressed for the transfer of provisions relating to Fundamental Rights to the State Constitution, the removal of the supervision and control of the Election Commission of India over elections to the State Legislature, and the modification of Article 356 to require the State Government's concurrence before imposing President's Rule in the State. It was not found possible to agree to any of these proposals. I must say to the credit of Sheikh Abdullah that despite his strong views on these issues, he has accepted the Agreed Conclusions.

The State Government is in agreement with the understanding reached and the approach in regard to political cooperation with Sheikh Sahib and his followers, as being in the interests of the State and the country.

Hon'ble Members will have seen the statement made by Mirza Afzal Beg on February 6, 1975, to the effect that in the changed circumstances plebiscite has become irrelevant and that the name and objectives of the Plebiscite Front have to be changed accordingly. We have been informed that this statement was endorsed at the recent meeting of the Executive Committee of the Party and that Mirza Afzal Beg has been entrusted with the task of calling a meeting of the General Body of the Front for taking the necessary follow-up action in this regard.

As is disclosed in the letters exchanged, Sheikh Abdullah has started in clear terms that the future of Jammu and Kashmir lies with India and that as one who cherishes the ideals of democracy, secularism and socialism, he has come forward with his cooperation with a view to further strengthen the bond between the State and the Union. We have every confidence that he will make his own distinctive contribution to the task of strengthening the nation and substaining its ideals.

The settlement that has been reached is an entirely domestic matter. It has been the endeavour of Government to find satisfactory solutions for political problems in a spirit of conciliation. The manner in which differences with Sheikh Abdullah have been resolved shows the vitality of the functioning of our democracy. It is my sincere hope that the agreement will open a new era of understanding and cooperation with those in the State of Jammu and Kashmir who had not associated themselves with the mainstrem of national life during the last two decades. It will also amply demonstrate the identity of interests and ideals of the people of the State with those in the rest of India and mark a milestone in the onward march of our nation.

AGREED CONCLUSIONS

1. The State of Jammu and Kashmir, which is a constituent unit of the Union of India, shall in its relations with the Union, continue to be governed by Article 370 of the Constitution of India.

2. The residuary powers of legislation shall remain with the State ; however, Parliament will continue to have power to make laws relating to the prevention of activities directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about cession of a part of the territory of India or secession of a part of the territory of India from the Union or causing insult to the Indian National Flag, the Indian National Anthem and the Constitution.

3. Where any provision of the Constitution of India had been applied to the State of Jammu and Kashmir with adaptations and modifications, such adaptations and modifications can be altered or repealed by an Order of the President under Article 370, each individual proposal in this behalf being considered on its merits ; but provisions of the Constitution of India already applied to the State of Jammu and Kashmir without adaptation or modification are unalterable.

4. With a view to assuring freedom to the State of Jammu and Kashmir to have its own legislation on matters like welfare measures, cultural matters, social security, personal law, and procedural laws, in a manner suited to the special conditions in the State, it is agreed that the State Government can review the laws made by Parliament or extended to the State after 1953 on any matter relating to the Concurrent List and may decide which of them, in its opinion, needs amendment or repeal. Thereafter, appropriate steps may be taken under Article 254 of the Constitution of India. The grant of President's assent to such legislation would be sympathetically considered. The same approach would be adopted in regard to the laws to be made by Parliament in future under the Proviso to Clause 2 of that Article ; the State Government shall be consulted regarding the application of any such law to the State and views of the State Government shall receive the fullest consideration.

5. As an arrangment reciprocal to what has been provided Article 368, a suitable modification of that Article as applied to the State should be made by Presidential Order to the effect that no law made by the Legislature of the State of Jammu & Kashmir, seeking to make any change in or in the effect of any provision of the Constitution of the State of Jammu and Kashmir relating to any of the undermentioned matters shall take effect unless the Bill, having been reserved for the consideration of the President, receives his assent; the matters are :

(a) the appointment, powers, functions, duties privileges and immunities of the Governor ; and

(b) the following matters relating to Elections by the Election Commission of India, eligibility for inclusion in the electoral rolls without discrimination, adult sufferage, and composition of the Legislative Council, being matters specified in Sections 138, 139, 140 and 50 of the Constitution of the State of Jammu and Kashmir.

6. No agreement was possible on the question of nomenclature of the Governor and Chief Minister and matter is therefore remitted to the Principals.

G. Parthasarathi

Mirza
Mohammad Afzal Beg
New Delhi.
Dated : Nov. 13, 1974

Copy of letter of Shelkh Mohd. Abdullah to the Prime Minister.

3, Kotla Line,
New Delhi.
Dated : 11-2-75

My dear Prime Minister,

I have seen the text of the conclusions reached between Shri G. Parthasarathi and Mirza Mohammad Afzal Beg on the various constitutional issues concerning the Centre-State relationship between the State of J&K and the Union of India. I have studied the document and have also had discussiens with you. As you are aware, it is my view that the constitutional relationship between the Centre and the State of J & K should be what it was in 1953, Nevertheless, I am happy to say that the Agreed Conclusions provide of good basis for my co-operation at the political level and for Centre-State relationship.

I appreciate that the main purpose of the dialogue was to remove misapprehension on either side to ensure that the

bond between the Union and the State is further strengthened and to afford to the people of the State full scope for undertaking social welfare and developmental measures.

The accession of the State of J&K to India is not a matter in issue. It has been my firm belief that future of J&K lies with India because of the common ideals that we share. I hope you would appreciate that the sole reason for my agreeing to co-operate at the political and governmental levels is to enable the State Government to initiate measures for the well-being of the people of the State which I have always considered as my sacred trust. It will be my constant endeavour to ensure that the State of J&K continues to make its contribution to the sovereignty, integrity and progress of the Nation. By the same token, I am sure that the Central Government would co-operate with the State Government fully in respect of measures to be undertaken by the State Government to further the progress and welfare of the people of the State as an integral part of India.

The country is passing through a critical period and it is all the more necessary for all of us who cherish the ideals of democracy, secularism and socialism, to strengthen your hands as the leader of the Nation and it is in this spirit that I am offering my whole-hearted co-operation.

Yours sincerely,
Sd/- (S. M. Abdullah)

Shrimati Indira Gandhi,
Prime Minister of India,
New Delhi.

Copy of the Prime Minister's letter to Sheikh Mohd. Abdullah.

New Delhi.
February 12, 1975.

Dear Sheikh Saheb,

I am happy to receive your letter expressing your cencur-

rence with the conclusions reached between Mirza Mohammad Afzal Beg and Shri G. Parthasarathi, on certain constitutional aspects of the relationship of the Centre with the State of Jammu & Kashmir and offering your whold-hearted co-operation at the potilical and governmental level to further promote the well-being of the people of the State of J & K. I am aware of your views on the Centre-State relationship in respect of the State of J & K. I have already explained to you that the clock cannot be put back and we have to take note of the realities of the situation. I am appreciative of the spirit in which you have expressed your agreement with the terms of the Agreed Conclusions.

The Agreed Conclusions have been examined and I am in a position to inform you that such appropriate executive action as may be necessary to give effect to them will be taken. I have been in close touch with the Chief Minister of the State who is in agreement with the approach in regard to political co-operation with you and the understanding reached about the relationship of the State with the Union.

The Central Government would undoubtedly continue to co-operate with the State Government fully in respeet of measures to be undertaken by the State Government to further the progress and welfare of the people of the State, which is of equal concern to the Central Government.

As pointed out by you, the country is passing through a critical period and it is a matter of great satisfaction to me that a person of your stature who made an outstanding contribution during the freedom struggle should come forward again to co-operate in the task of strengthening the national and sustaining the ideals.

Yours sincerely,

Sd/- (Indira Gandhi)

Sheikh Mohd. Abdullah,
3, Kotla Lane,
New Delhi.

Copies of collateral letters.

November 13, 1974

Dear Shri Parthasarathi,

In the course of our discussion, I made a proposal that appeals to the Supreme Court under Article 132 of the Constitution of India from the decision of the High Court of Jammu and Kashmir, should lie only on a certificate under clause (1) of that Article. After a detailed discussion on this, you had agreed to the proposal and stated that it can be implemented by an Order under Article 370 making suitable modification or the modifications made under Article 367.

Kindly acknowledge receipt of this letter.

Yours sincerely,

Sd/- (Mirza Mohammad Afzal)

Shri G. Parthasarathi,
31, Aurangzeb Road,
New Delhi.

November 13, 1974

Dear Beg Saheb,

I acknowledge receipt of your letter dated the 13th November, 1974. The proposal referred to therein was discussed between us at length and agreed to by me. It can be implemented by an appropriate Order of the President in accordance with the procedure prescribed under Article 370.

Yours sincerely,

Sd/- (G. Parthasarathi)

Mirza Mohammad Afzal Beg,
Camp : New Delhi.

Appendix V

THE CONSTITUTION OF INDIA

Part III

*FUNDAMENTAL RIGHTS (as applicable in relation to the State of Jammu and Kashmir)

General

12. Definition—In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

13. Laws inconsistent with or in derogation of the fundamental rights—

(1) All laws in force in the territory of India immediately before the commencement of the Constitution

*Section 10 of the Constitution of the State of Jammu and Kashmir provides—

"The permanent residents of the State shall have all the rights guaranteed to them under the Constitution of India".

Part III of the Constitution of India dealing with Fundamental Rights as applied in relation to the State of Jammu and Kashmir (i. e. with modifications and exceptions subject to which it applies) by the Constitution (Application to Jammu and Kashmir) Order, 1954, (C. O. 48 dated 14th May, 1954), as amended up to 31st March, 1969 is given in this part of compliation.

The aforesaid Order (C. O. 48 of 1954) came into force on the fourteenth day of May, 1954 (Clause 1 (2) of the Order).

(Application to Jammu and Kashmir) Order, 1954, in so for as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this Article, unless the context otherwise requires,—

(a) "law" includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law ;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954 and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

Right to Equality

14. Equality before law—The State shall not deny any person equality before the law or the equal protection of the laws within the territory of India.

15. Prohibition of discrimination on grounds of religion, race, caste, sex, place of birth—

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liabilities, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and

places of public entertainment ; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this Article shall prevent the State from making any special provision for women and children.

(4) Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes *(xxx)

(5) Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(6) Nothing in this Article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

17. Abolition of Untouchability—"Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence in accordance with law.

18. Abolition of titles—

(1) No title, not being a military or academic distinction, shall be conferred by the State.

*In its application to the State of Jammu and Kashmir, the words "and the Scheduled Tribes" in Article 15 (4) and clause (3) of Article 16 have been omitted.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept, without the consent of the President, any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

Right to Freedom

19. Protection of certain rights regarding freedom of speech, etc—

(1) All citizens shall have the right—

(a) to freedom of speech and expression ;

(b) to assemble peaceably and without arms ;

(c) to form associations or unions ;

(d) to move freely throughout the territory of India ;

(e) to reside and settle in any part of the territory of India ;

(f) to acquire, hold and dispose of property ; and

(g) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and intergrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of *(the security of the State or) the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of *(the security of the State or) the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clause (d), (e) and (f) of the said sub-clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general the public *(or in the interest of the security of the State).

(6) Nothing in sub-clause (g) of the said clause shall affect the operation or any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to,

*The words in square brackets in Article 19 (3) and (4) inserted vide C.O. 48 dated 15-4-1954, for a period of twenty years vide C.O. 86 of 1969, w. e. f. 15-4-1954.

*The words in square brackets substituted and clause (7) inserted vide C.O. 48 dated 14-5-1954, for a period of twenty years vide C O. 86 of 1969 w. e. f. 14.5.1954.

or prevent the State from making any law relating to—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

(7) The words "reasonable restrictions" occuring in clauses (2), (3), (4) and (5) shall be construed as meaning such restrictions as the appropriate Legislature deems reasonable).

20. Protection in respect of conviction for offences—

(1) No person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force as the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

21. Protection of life and personal liberty—No person shall be deprived of his life or personal liberty except according to procedure established by law.

22. Protection against arrest and detention in certain cases—

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien ; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by *(the Legislature of the State) under sub-clause (b) of clause (7) ; or

(b) such person is detained in accordance with the provisions of any law made by *(the Legislature of the State) under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall aford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) *(The Legislature of the State) may by law prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4) ;

(b) the maximum period for which any person may, in any class or classes be detained under any law providing for preventive detention ; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

Right against Exploitation

23. Prohibition of traffic in human beings and forced labour—

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this Article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrinimation on grounds only of religion, race, caste or class or any of them.

24. Prohibition of employment of children in factories, etc.—No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

*In clauses (4) and (7) of Article 22 the words "the Legislature of the State" substituted for the word "Parliament".

Right to Freedom of Religion

25. Freedom of conscience and free profession, practice and propagation of religion—

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may associated with religious practice ;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I—The wearing and carrying of Kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

26. Freedom to manage religious affairs—Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes ;

(b) to manage its own affairs in matters of the religion ;

(c) to own and acquire movable and immovable property ; and

(d) to administer such property in accordance with law.

27. Freedom as to payment of taxes for promotion of any particular religion—No person shall be compelled to pay

any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions—

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administrated by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Cultural and Education Rights

29. Protection of interests of minorities—

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of Statd funds on grounds only of religion, race, caste, language or any of them.

30. Right of minorities to establish and administer educational institutions—

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Right to Property

31. Compulsory acquisition of property—

(1) No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsory acquired or requisitioned save for a public purpose and save by authority of law, which provide for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given ; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2-A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his propety.

*(3) xxx

*(4) xxx

*(5) Nothing in clause (2) shall affect—

(a) the provisions of any existing law ; or

(b) the provisions of any law which the State may hereafter make—

(i) for the purpose of imposing or levying any tax or penalty ; or

(ii) for the promotion of public health or the prevention of danger to life or property ; or

*In Article 31, clauses (3), (4) and (6) omitted and clause (5) substituted.

(iii) with respect to property declared by law to be evacuee property).

*(6) xxx

31-A. Saving of laws providing for acquisition of estates, etc.—

(1) Notwithstanding anything contained in Article 13, no law providing for—

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such right, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporation either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accuring by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights, conferred by Article 14, Article 19 or Article 31.

*Provided xxxxx

Provided further that where any law makes any provision for the acquisition by the State or any estate and where any

*The first proviso to Article 31-A omitted.

land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

(2) In this Article,—

+(a) 'estate' shall mean land which is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes—

(i) sites of buildings and other structures on such land ;

(ii) trees standing on such land ;

(iii) forest land and wooded waste ;

(iv) area covered by or fields floating over water ;

(v) sites of jandars and gharats ;

(vi) any jagir, inam, muafi or mukarrari or other similar grant, but does not include—

(i) the site of any building in any town, or town area or village abadi or any land appurtenant to any such building or site ;

(ii) any land which is occupied as the site of a town or village ; or

(iii) any land reserved for building purposes in a municipality or notified area or cantonment or town area or any area for which a town planning scheme is sanctioned.)

(b) the expression "rights", in relation to an estate, shall include any rights vesting in proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenus.

+Sub-clause (a) of clause (2) of Article 31-A substituted.

31-B. Validation of certain Acts and Regulations—Without prejudice to the generality of the provisions contained in Art. 31-A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges many of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.

Right to Constitvtional Remedies

32. Remedies for enforcement of rights conferred by this Part.—

(1) The right to move the Supreme Court by appropriate proceeding for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue direction or orders or writs, including writes in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* whichever may be appropriate for the enforcement of any of the rights conferred by this Part.

*(2-A) Without prejudice to the powers conferred by clauses (1) and (2), the High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including inappropriate cases any Government within those territories, directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo waranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by this Part.)

*(3) xxxx

(4) The right guaranteed by this article shall not be cuspended except as otherwise provided for by this Constitution.

*Clause (2A) of Article 32 inserted and clause (3) omitted.

33. Power to Parliament to modify the rights conferred by this Part in their application to forces—Parliament may by law determine to what extent any of the rights conferred by this Part shall, in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

34. Restriction on rights conferred by this Part while martial law is in force in any area.—Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

35. Legislation to give effect to the provisions of this Part.—Notwithstanding anything in this Constitution,—

(a) Parliament shall have, and the Legislature of a State shall not have, power to make laws—

(i) with respect to any of the matters which under[+] (xxx) Article 33 and Article 34 may be provided for by law made by Parliament ; and

(ii) for prescribing punishment for those acts which are declared to be offences under this Part :

and Parliament shall, as soon as may be after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954] make laws for prescribing punishment for acts referred to in sub-clause (ii) ;

[+]In clause (a) (i) of Article 35, the words, figures and brackets, "clause (3) of Article 16, clause (3) of Article 32" omitted.

(b) any law in force immediately before the commencement of *the Constitution (Application to Jammu and Kashmir) Order, 1954 in the territory of India with respect to any of the matters referred to in sub-clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause (ii) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under Article 372, continue in force until altered or repealed or amended by Parliament.

*(c) no law with respect to preventive detention made by the Legislature of the State of Jammu and Kashmir, whether before or after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, shall be void on the ground that it is inconsistent with any of the provisions of this Part, but any such law shall, to the extent of such inconsistency, cease to have effect on the expiration of twenty years from the commencement of the said Order, except as respects things done or omitted to be done before the expiration thereof).

Explanation—In this Article, the expression "law in force" has the same meaning as in Article 372.

*(35-A)—Saving of laws with respect to Permanent residents and their rights—Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and no law hereafter enacted by the Legislature of the State—

(a) defining the classes of person who are, or shall be, permanent residents of the State of Jammu and Kashmir ; or

(b) conferring on such permanent residents any special rights and privileges or imposing upon other persons

*In Article 35, the words "the Constitution (Application to Jammu and Kashmir) Order, 1954" substituted for the words "this constitution", and clause (c) thereof and Article 35-A added.

any restrictions as respects—

(i) employment under the State Government ;

(ii) acquisition of immovable property in the State ;

(iii) settlement in the State ; or

(iv) right to scholarships and such other forms of aid as the State Government may provides,

shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provisions of this Part).

+370. Temporary provisions with respect to the State of Jammu and Kashmir.—(1) Notwithstanding anything in this constitution,—

(a) the provisions of Article 238 shall not apply in relation to the State of Jammu and Kashmir ;

(b) the power of Parliament to make laws for the said State shall be limited to—

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State ; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

+See the Constitution (Application to Jammu and Kashmir) Order, 1954, published with the Ministry of Law Notification No. C.O. 48, dated the 14th May, 1954, Gazette of India, Extraodinary, Part II, Section 3 p. 821, as amended from time to time.

**Explanation*—For the purposes of this Article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948 ;

(c) he provisions of Article (1) and of this Article shall apply in relation to the State ;

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify :

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State :

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

* In exercise of the powers conferred by this Article the President, on the recommendation of the Constituent Assembly of the State of Jammu and Kashmir, declared that, as from the 17th day of November, 1952, the said Art. 370 shall be operative with the modification that the Explanation in clause (1) thereof, the following Explanation is substituted, namely :—

"Explanation—For the purpose of this Art., the Government of the State means the person for the time being recognised by the President on the recommendation of the Legislative Assembly of the State as the *Sadar-i-Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office."

(Ministry of Law Order No. C.O. 44, dated the 15th November 1952).

*Now 'Governor'.

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this Article, the President may, by public notification, declare that this Article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify :

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

Appendix VI

ARTICLE 370 OF THE CONSTITUTION OF INDIA

*370 Temporary provisions with respect to the State of Jammu and Kashmir.

(1) Notwithstanding anything in this Constitution—

(a) the provisions of Article 238 shall not apply in relation to the State of Jammu and Kashmir ;

(b) the power of Parliament to make laws for the said State shall be limited to—

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the instrument of Accession

*In exercise of the powers conferred by this Article the President on the recommendation of the Constituent Assembly of the State of Jammu and Kashmir, declared that as from the 17th day of November, 1952, the said Article 370 shall be operative with the modification that for the Explanation in clause (1) thereof, the following Explanation is substituted, namely :—

"Explanation—For the purpose of this Article, the Government of the State means the person for the time being recognised by the President on the recommendation of the Legislative Assembly of the State as the Sadar-i-Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office." (Ministry of Law Order No. C. O. 44, dated the 15th November, 1952.)

governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for the State ; and

(ii) such other matters in the said List as, with the concurrence of the Government of the State, the President may by order specify.

Explanation—For the purposes of this Article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation, dated the fifth day of March, 1948 :—

(c) the provisions of Article (1) and of this Article shall apply in relation to that State ;

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify :

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of that State ;

*See the Constitution (Application to Jammu and Kashmir) Order, 1954, published with the Ministry of Law Notification No. C.O. 48, dated the 14th May, 1954, *Gazette* of India, Extraordinary, Part II, Section 3, p. 821, as amended from time to time.

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this Article, the President may, by public notification, declare that this Article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify :

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

The State of Jammu and Kashmir is a part of Indian territory* and is included in the List of States of the First Schedule of the Constitution. But the position of this State differs from other States in the following respects :

(i) The provisions dealing with the governmental machinery in the State of the Union do not apply to the State of Jammu and Kashmir.

(ii) The legislature authority of the Union Parliament in respect of this State is limited to those matters in the Union and Concurrent List, which are declared by the President, in consultation with the Government of the State, to conform to the terms of the Instrument of the Accession.

(iii) Only such of the other provisions of the Constitution shall apply to this State as the President may by order specify.58

*The Ruler of the Jammu and Kashmir State executed the Instrument of accession on 26-10-1947.

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